Name : Morgan Elis Peck
Student # : 000458360
Birth Date : 08/14

Date: 06/06/2023

Academic Program(s)

Law J.D.
Law Major

Law Academic Record (4.0 Grade System)

2021 Fall

LAW	6010	**Civil Procedure**	4.00	**B+**	13.20
Instructor:		Nicholas Zeppos Nikki Younger			
LAW	6020	**Contracts**	4.00	**A-**	14.80
Instructor:		Rebecca Allensworth			
LAW	6040	**Legal Writing I**	2.00	**A-**	7.40
Instructor:		Kelly Murray Jennifer Swezey Jacqueline Pittman			
LAW	6060	**Life of the Law**	1.00	**P**	0.00
Instructor:		Timothy Meyer Sara Mayeux			
LAW	6090	**Torts**	4.00	**B**	12.00
Instructor:		James Rossi			

	EHRS	QHRS	QPTS	GPA
SEMESTER:	15.00	14.00	47.40	3.385
CUMULATIVE:	15.00	14.00	47.40	3.385

2022 Spring

Term Honor: Dean's List

LAW	6030	**Criminal Law**	3.00	**A**	12.00
Instructor:		Terry Maroney			
LAW	6050	**Legal Writing II**	2.00	**A-**	7.40
Instructor:		Kelly Murray Jacqueline Pittman			
LAW	6070	**Property**	4.00	**A**	16.00
Instructor:		Christopher Serkin			
LAW	6080	**Regulatory State**	4.00	**A**	16.00
Instructor:		Kevin Stack			
LAW	7190	**Family Law**	3.00	**A**	12.00
Instructor:		Jenny Cheng			

	EHRS	QHRS	QPTS	GPA
SEMESTER:	16.00	16.00	63.40	3.962
CUMULATIVE:	31.00	30.00	110.80	3.693

2022 Fall

Term Honor: Dean's List

LAW	5770	**Jrn'l Transnat'l Law**	0.00	**P**	0.00
Instructor:		Ingrid Wuerth			
LAW	5785	**Social Justice Reporter Board**	0.00	**P**	0.00
Instructor:		Yesha Yadav			
LAW	5900	**Moot Court Competition**	1.00	**P**	0.00
Instructor:		Susan Kay Kendall Jordan			
LAW	7000	**Administrative Law**	3.00	**A**	12.00
Instructor:		Kevin Stack			
LAW	7078	**Constitutional Law I**	4.00	**A**	16.00
Instructor:		Matthew Shaw			
LAW	7116	**Corporations & Bus. Ent.**	4.00	**A-**	14.80
Instructor:		Brian Broughman			
LAW	7221	**Human Trafficking Short Course**	1.00	**P**	0.00
Instructor:		Michael Newton John Richmond			

	EHRS	QHRS	QPTS	GPA
SEMESTER:	13.00	11.00	42.80	3.890
CUMULATIVE:	44.00	41.00	153.60	3.746

2023 Spring

Term Honor: Dean's List

2023 Spring

Dean's List

LAW	5770	**Jrn'l Transnat'l Law**	1.00	**P**	0.00
Instructor:		Ingrid Wuerth			
LAW	5780	**Social Justice Reporter**	1.00	**P**	0.00
Instructor:		Yesha Yadav			
LAW	5785	**Social Justice Reporter Board**	1.00	**P**	0.00
Instructor:		Yesha Yadav			
LAW	7180	**Evidence**	4.00	**A**	16.00
Instructor:		Garrick Pursley			
LAW	7651	**Spanish for Lawyers Short Crs**	1.00	**P**	0.00
Instructor:		Alvaro Manrique Barrenechea			
LAW	7664	**Sustainable Cities**	3.00	**A-**	11.10
Instructor:		Caroline Cox			
LAW	7905	**Externship-In Nashville**	3.00	**P**	0.00
Instructor:		Spring Miller			
LAW	8040	**Constitutional Law II**	3.00	**A**	12.00
Instructor:		Sara Mayeux			

	EHRS	QHRS	QPTS	GPA
SEMESTER:	17.00	10.00	39.10	3.910
CUMULATIVE:	61.00	51.00	192.70	3.778

Peck

Morgan Peck

Name : **Morgan Elis Peck**
Student # : **000458360**
Birth Date : **08/14**

Date: 06/06/2023

---------- NO ENTRIES BELOW THIS LINE ----------

Peck

Morgan Peck

Vanderbilt University
Office of the University Registrar
PMB 407701
110 21st Avenue South, Suite 110
Nashville, TN 37240-7701
615-322-7701
university.registrar@vanderbilt.edu
registrar.vanderbilt.edu

Academic Calendar: The academic year consists of fall and spring semesters and a summer term. The Doctor of Medicine program is offered on a year term.

Academic Units: Credit hours are semester hours except in the Doctor of Medicine program. Credits in the Doctor of Medicine program are course- or rotation-based.

Accreditation: Vanderbilt University is accredited by the Southern Association of Colleges and Schools.

Release of Information: This document is released at the request of the student and in accordance with the Family Educational Rights and Privacy Act of 1974. It cannot be released to a third party without the written consent of the student.

Course Numbers (effective Fall 2015):

0000-0799 Non-credit, non-degree courses; do not apply to degree program
0800-0999 Courses that will eventually be given credit (e.g., study abroad)
1000-2999 Lower-level undergraduate courses
3000-4999 Upper-level undergraduate courses
5000-5999 Introductory-level graduate and professional courses (including those co-enrolled with undergraduates)
6000-7999 Intermediate-level graduate and professional courses
8000-9999 Advanced-level graduate and professional courses

Additional information on course numbering is available at registrar.vanderbilt.edu/faculty-staff/course-renumbering/.

Course Numbers (prior to Fall 2015):

100- and 1000-level courses are primarily for freshmen and sophomores. May not be taken for graduate credit.

200- and 2000-level courses are normally for juniors and seniors. Selected courses may be taken for graduate credit.

300-, 3000-, and above-level courses are for graduate and professional credit only - unless special permission is granted.

Grading Systems:

For information about grading systems in place prior to the dates listed, visit registrar.vanderbilt.edu/transcripts/transcript-key/.

College of Arts and Science (A&S), effective Fall 1982;
Blair School of Music (BLR), effective Fall 1986;
Divinity School (DIV), effective Fall 1983;
Division of Unclassified Studies (DUS), effective Fall 1982;
School of Engineering (ENG), effective Fall 1991;
Graduate School (GS), effective Fall 1992;
Law School (LAW), effective Fall 1988;
School of Medicine (MED), Medical Masters and other Doctoral Programs, effective Fall 2010;
School of Nursing (NURS), effective Fall 2007;
Peabody College (PC) undergraduate, effective Fall 1990;
Peabody College (PC) professional, effective Fall 1992.

A+	4.3	LAW only
A+	4.0	Not in A&S, DIV (or BLR, PC as of Fall 2012)
A	4.0	
A-	3.7	
B+	3.3	
B	3.0	
B-	2.7	
C+	2.3	
C	2.0	
C-	1.7	
D+	1.3	Not in PC professional, NURS (or GS, MED as of Fall 2011)
D	1.0	Not in PC professional, NURS (or GS, MED as of Fall 2011)
D-	0.7	Not in PC professional, MED, NURS (or GS as of Fall 2011)
F	0.0	

Owen Graduate School of Management (OGSM)

Master of Accountancy, effective Fall 2011.		**All Management Programs,** effective Fall 2007.		
A	4.0	SP	Superior Pass	4.0
A-	3.5	HP	High Pass	3.5
B	3.0	PA	Pass	3.0
B-	2.5	LP	Low Pass	2.5
F	0.0	F	Fail	0.0

School of Medicine (MED) Doctor of Medicine Program, effective 2003.

H	Honors	Superior or outstanding work in all aspects.
HP	High Pass	Completely satisfactory work with some elements of superior work.
P	Pass	Completely satisfactory work in all aspects.
P*	Marginal Pass	Serious deficiencies requiring additional work (temporary grade).
F	Fail	Unsatisfactory work.

Current and Cumulative Statistics:

EHRS	Earned Hours
QHRS	Quality Hours
QPTS	Quality Points
GPA	Grade Point Average (calculated as GPA = QPTS/QHRS)

Other Symbols:

AB	Absent from final examination (temporary grade)**
AU/AD	Audit**
AW	Audit Withdrawal**
CE	Credit by Examination
CR	Credit only (no grade due)
E	Condition, with permission to retake exam (temporary grade)**
H	Incomplete in Arts and Science Honors course (temporary grade)**
	Honors in Divinity School**
I	Incomplete (temporary grade)**
IP	In Progress (temporary grade)**
LP	Low Pass (DIV, GS)**
M	Absent from final examination (temporary grade)**
MI	Absent from final examination and incomplete (temporary grade)**
NC	No credit toward current degree**
NO EQ	Transfer or study abroad coursework with no Vanderbilt equivalent
P	Pass**
PI	Permanent Incomplete (DIV, GS, LAW, MED)**
PM	Pass-Medical (GS only)
R	Repeat of previous course
RC	Previous trial of repeated course**
S	Satisfactory**
U	Unsatisfactory**
W	Withdrawal**
WF	Withdrawal while failing**
WP	Withdrawal while passing**
X	Grade unknown, hours earned awarded**

** Does not affect grade point average. (Prior to Fall 2008, the AB, I, M, and MI grades were calculated as an F in A&S and PC.)

UNIV: Courses offered in the UNIV subject are University Courses. The University Course initiative was developed to promote new and creative trans-institutional learning. For more information, please see vu.edu/university-courses.

For changes to this key since the last revision, please visit registrar.vanderbilt.edu/transcripts/transcript-key/.

Revised 5/1/2022

June 09, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

I write with great enthusiasm to recommend Morgan Peck for a clerkship in your chambers. Morgan will make a great law clerk, and I urge you to call her at the beginning of your selection period. As I note below, Morgan has been a student in two of my classes at Vanderbilt, and her performance, personal demeanor, and judgment have been outstanding.

I first got to know Morgan during her 1L spring in a required course on statutory interpretation and the regulatory process we teach at Vanderbilt (called Regulatory State). The material is challenging for 1L students, but not for Morgan. As the semester progressed, I turned to her in class more and more often when other students were struggling. I prized her ability to see through the issues, focus on critical facts, and articulate herself clearly. I was very pleased to see that her exam was the second strongest in a large class, earning her a very strong A. Significant portions of the model student answer I distributed to students were drawn from her exam.

I was delighted to have Morgan as a student again in my upper-level Administrative Law course in her second year, in the fall of 2022. She was again outstanding. Her preparation was comprehensive, just as it had been in her 1L year. She made several contributions that carried forward with the class on difficult issues surrounding deference to agency and due process. Her written work was polished and well-executed. Morgan also frequently stopped by my office hours to talk about issues in the class. Those exchanges made all the more clear Morgan's genuine curiosity about the law and interest in the larger dynamics of the legal system. Given Morgan's commitment to mastery, I am sure she would devote the same attention to any issue on her desk.

I gained so much confidence in Morgan that I invited her to be among the students who took a prominent speaker out to dinner as well as to meet one of the faculty members we were trying to recruit to Vanderbilt. I view Morgan in exactly that light – the kind of law student that you would want external parties to meet to provide the best view of the talents and interest of our students.

As to her trajectory, as Morgan's resume reflects, she is firmly committed to a career assisting communities which have pressing and underserved legal needs. She is working hard to figure out whether she wants to do that work on immigration issues, for migrant farm workers, or in some other domain. Many students come to law school with the aim of helping those with underserved needs. In Morgan's case, she is carrying through on that goal. It inspires me to see her take her legal and personal talents in that direction. She has a quiet sense of purpose that seems to provide orientation to their choices.

As for comparable students, Morgan strikes me as on the same level of quality of my former students in my fifteen years at Vanderbilt who have gone on to obtain clerkships in the federal appeals courts in Fourth, Fifth, and Sixth Circuits or with district judges in those Circuits and in the U.S. District Court for the District of Columbia.

In sum, I see great upsides to Morgan as a clerk who would produce outstanding work, appropriately seek out feedback, and be a pleasure to have around chambers. I see no downsides. I also think you will be interested, as I am, in following her career in public service. Please do not hesitate to call or email me if you have any questions about Morgan. I can be reached easily by email, kevin.stack@vanderbilt.edu.

Yours sincerely,

Kevin M. Stack

June 09, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

I write to recommend Morgan Peck, a 2L at Vanderbilt Law School, for a clerkship. Morgan is a very strong student and an all-around excellent person. I know you will enjoy having her as part of your chambers.

I had the pleasure of teaching Morgan in Criminal Law during the Spring 2022 semester. She stood out as particularly clicked in, by which I mean interested, active, and able to quickly process the material and move to a deeper level of understanding. Morgan was a frequent visitor to office hours, and not because she was having trouble but because she really, really enjoyed thinking through the material. As I got to know her better, I understood why: criminal law is both intellectually and morally challenging. Intellect and morals are central to how Morgan seeks to live in the world. Not surprisingly, she did quite well in the class, starting with a perfect score on the first quiz and sticking the landing with an A.

I was not surprised to see that Morgan performed equally well in many of her other 1L classes, including Property, Regulatory State, and Family Law (which she took as her 1L elective, alongside 2Ls and 3Ls). Indeed, Morgan basically rocked 1L Spring semester. She performed perfectly well in the fall, but dramatically improved in the spring. I am always impressed by students who pull off that level of improvement when being curved against the exact same peers. While everyone is learning and improving, these students—like Morgan—demonstrate an enhanced ability to take in feedback, change their approach, and execute. That love of a learning curve will, I am sure, serve Morgan well throughout her career.

Morgan has (not surprisingly) has continued her run of excellence in the 2L year. Even while juggling journal and Moot Court duties she has kept her grades high. I am away on a sabbatical fellowship this year, so I unfortunately have not had her in a class, but I very much look forward to teaching her again next year. She's a terrific partner in teaching and learning.

In addition to being an excellent student, Morgan is a valued member of the Vanderbilt Law community. In addition to serving on the Journal of Transnational Law, she has joined the inaugural editorial board of our exciting new Social Justice Reporter. The result of several years of thought and planning, this venture (the first new journal in many, many years to make it through the difficult approval process!) will be entirely online. The editorial board will carefully curate, edit, and present scholarship, short essays, and opinion pieces inviting open, informed debate on some of the most critical and contentious issues facing law and society today.
Morgan also has immersed herself in a variety of campus activities, including the Legal Aid Society (director of the Street Law program), Women's Law Students Association, Law Students for Social Justice, OUTLaw, and Labor & Employment Law Society. She organized the Pro Bono Spring Break trip to work with the Appalachian Citizens' Law Center in eastern Kentucky.

It's likely obvious from that litany of activities that Morgan quickly has established herself as a student leader. That is not surprising when one looks to her deep commitment to public service while a student at Notre Dame. While still an undergraduate, Morgan interned for Indiana Legal Services, assisting with domestic violence cases; handled hotline calls from persons detained by ICE, including Spanish-speaking migrants; raised money for women's education in Bangladesh; I could go on. She did all of this while earning a double degree magna cum laude, serving in the student senate, participating in the honors program, and studying abroad.

After graduating from Notre Dame, Morgan devoted a year of service working with Spanish-speaking farmworkers in the Pacific Northwest through Jesuit Volunteer/AmeriCorps. Now that she has a new set of skills, she deepened her work with immigrant and migrant workers this past summer by interning with our highly-regarded local office of Southern Migrant Legal Services. Morgan is now building on that foundation, too, doing pro bono work with a local immigration clinic. It is always wonderful to see a student who developed an interest before law school to continue it in law school. It shows a certain commitment and focus. It is also wonderful for the student, as the contrast makes clear exactly how much more they can accomplish with a legal education than without one.

Morgan is, in short, a person who seamlessly weaves together intellect and heart. She knows that her many gifts are not meant for her benefit alone.

I hope you will consider Morgan Peck for a clerkship. She will do excellent work and you will enjoy her presence. Please do not hesitate to contact me with any questions or concerns.

Respectfully,

Terry A. Maroney
Robert S. and Theresa L. Reder Chair in Law

Terry Maroney - terry.maroney@vanderbilt.edu - 615-343-3491

Morgan E. Peck

6 Brett Manor Ct., Hunt Valley, MD 21030
(443) 895-1913 • morgan.e.peck@vanderbilt.edu

WRITING SAMPLE

The attached writing sample is an appellate brief prepared for my Legal Writing course in Spring 2022. It has not been edited by my professor or teaching assistant. For the purposes of this writing sample, I have removed the Statements of Jurisdiction and the Case and lightly edited the remaining sections.

Our client, a long-time news anchor, appealed the district court's decision granting partial summary judgment to her former employer on her claim for unlawful discrimination under the Age Discrimination in Employment Act.

STATEMENT OF THE ISSUE

I. Under the Age Discrimination in Employment Act, should summary judgment for the employer be reversed when the supervisor assigned a long-time anchor over the age of forty more appearance directives than her younger coworkers with lower ratings and repeatedly made ageist statements about her before firing her? 29 U.S.C. § 621.

STATEMENT OF FACTS

Kile, a long-time anchor at WGCX-JAX, cooperated with the intense appearance directives assigned by Zachary Napier, the station manager, until he ridiculed her age and appearance at a work event. (R. 12, 14–15.) Napier demoted Kile to the news programs frequently watched by her strongest demographic, then suddenly terminated her months later, citing her non-cooperation with the directives. (R. 18, 25, 32.)

Kile, born in 1970, started anchoring at WGCX-JAX in 1995, joined the Six O'Clock and Eleven O'Clock News programs in 2000, and repeatedly received awards for her work. (R. 12, 43.) Before July 2019, when WGCX-JAX hired Napier, Kile had only received positive work evaluations (R. 16, 21). Before December 2019, when Napier gave Kile an evaluation of inadequate, Kile had never received any performance improvement directives. (R. 27, 47.)

During Napier's first few days at WGCX-JAX, he observed Kile and Bruce Wane on the Eleven O'Clock News. (R. 22.) He said to employees nearby, "Oh, my God, she looks like the school librarian! How old is she?" (R. 13, 44.) When Kile confronted Napier about those comments, he responded that she "needed to update [her] look." (R. 13.)

Napier soon hired Haley Quint, a twenty-nine-year-old anchor, for a new show at WGCX-JAX. (R. 23, 37.) A viewer emailed WGCX-JAX expressing her disapproval of Quint's tight-fitting wardrobe; Napier dismissed her as a "very disturbed" "old spinster" who did not "reflect the viewers we want to attract." (R. 23, 44.) When Kile later discussed Quint's on-air

wardrobe and inexperienced speech pattern with Napier, he countered that Quint "'certainly arouses interest.'" (R. 16.)

After his arrival, Napier hired consultants to survey viewers' opinions about WGCX-JAX and its anchors. (R. 24, 45.) Napier used the results to assign appearance directives to the anchors in March 2020. (R. 24.) All anchors younger than Kile received only one directive, which they all completed. (R. 24, 37–39.) For example, the weekend co-anchor who ranked lower than Kile in two categories wore suits provided by a sponsor. (R. 24, 35.) The sports anchor who ranked last overall and lower than Kile in three categories cut his hair and beard. (R. 24, 35.) Napier only assigned Quint a speech coach, despite numerous surveyed viewers, whom Napier suspected were "church ladies," critiquing Quint's clothing choices and speech pattern. (R. 24.)

Kile received six appearance directives: speech, dress, makeup, hairstyle, exercise, and cosmetic surgery. (R. 14.) The survey revealed that Kile was the highest ranked anchor among the target demographic of women ages twenty-nine to fifty-four, but ranked last among younger men and fifth in the other categories. (R. 35, 43.) Napier claimed that Kile's appearance explained her lower ratings, which required a full makeover to improve. (R. 13, 45.) WGCX-JAX would also run a periodic feature on Kile's makeover to appeal more to her strong female viewership. (R. 13, 25.) Kile agreed to the directives, except for cosmetic surgery due to concerns about complications. (R. 14.) Although cosmetic surgery is rarely required by a station, Wane underwent a facelift after joining WGCX-JAX at age fifty-six because the station manager at the time suggested he remedy his tired appearance. (R. 19, 29.)

Kile's regimen involved multiple meetings with five consultants for almost four months. (R. 15.) Kile worked hard with the speech consultant and personal trainer, which involved daily five-mile runs and gym sessions four times per week. (R. 15.) She disagreed with the suggested

changes to her appearance that went against her style, comfort, and busy schedule. (R. 14.) The wardrobe consultant wanted her to not "look like a spinster or someone's high school English teacher." (R. 46.) The makeup consultant insisted, "You want to arouse interest." (R. 46.) By July, Kile adopted the suggestions of growing out her hair and wearing skirts. (R. 14–15.) Nonetheless, Napier announced in June that Kile would instead anchor the earlier news programs in August to maintain the programs' strong viewership in Kile's strongest demographic. (R. 26.)

At a company picnic on July 4, 2020, Kile overheard Napier say to an Eleven O'Clock News sponsor, "Kile? You mean that old cow? Ah… she's all washed up. Wait until you see the heat at 11:00 in August." (R. 47.) He later tried to paint this as unrelated "guy talk." (R. 26.) Later, while talking with other anchors, Napier asked Quint for her opinion of Kile after Quint expressed interest in anchoring the evening news. (R. 30.) Within earshot of Kile, Quint replied, "Grandma should put on a dress and show some skin, or let someone who knows how to use a computer have a chance." (R. 30.) A few weeks later, Napier surveyed Wane as part of Kile's employee evaluation; Wane said that he "found it particularly hard to deal with her because she looks so old and lacks any feminine appeal!" (R. 28.)

After overhearing the disparaging comments at the picnic, Kile informed Napier that she would no longer continue with the makeover. (R. 15.) Napier once again promoted cosmetic surgery and the makeover's importance for WGCX-JAX's ratings. (R. 26.) After her demotion became effective on August 1, 2020, Kile stopped working with the consultants. (R. 47.) Quint replaced Kile on the Eleven O'Clock News program, and a newly hired thirty-nine-year-old anchor replaced her on the Six O'Clock News Program. (R. 37, 39.) On October 1, 2020, citing Kile's refusal to comply with the appearance directives necessary to boost her ratings, Napier

terminated Kile by letter, after twenty-seven years at WGCX-JAX, and hired a thirty-five-year-old anchor to replace her. (R. 12, 39–40.)

SUMMARY OF THE ARGUMENT

This Court should reverse summary judgment for WGCX-JAX because there is a genuine dispute of material fact about whether its proffered reasons for firing Kile were pretext for age-based animus.

The inconsistencies in Napier's concern about WGCX-JAX's ratings and Kile's cooperation with the appearance directives, paired with Napier's ever-present ageism, discredit WGCX-JAX's proffered reasons as more likely than not pretext for age discrimination. Napier assigned Kile multiple intense directives, while only assigning lower-ranked younger anchors one low-effort directive each and dismissing viewer-suggested improvements for another younger anchor. Napier demoted Kile while she was cooperating with the directives, then terminated her while she was anchoring the programs watched by her strongest demographic. Furthermore, Napier made disparaging comments about Kile's age in connection with her job performance shortly before her termination. Therefore, summary judgment for WGCX-JAX is precluded based on a jury question of whether WGCX-JAX's proffered reasons of poor ratings and noncooperation with the makeover were pretext for its ageist motive in firing Kile.

ARGUMENT

The appellate standard of review for an order granting summary judgment is *de novo*. Combs, 106 F.3d at 1526. Summary judgment should only be granted when there is no genuine dispute of material fact and judgment is warranted as a matter of law. Fed. R. Civ. P. 56(a). Any such dispute, including evidence credibility, warrants consideration by a jury and thus precludes summary judgment. See Damon v. Fleming Supermarkets of Fla., Inc., 196 F.3d 1354, 1357 (11th Cir. 1999) (reversing summary judgment in favor of employer because employee presented

evidence creating a genuine issue of material fact in his ADEA claim). At the summary judgment stage, the court must draw all factual inferences in favor of the non-movant. Damon, 196 F.3d at 1361; Combs, 106 F.3d at 1524.

The ADEA prohibits firing employees who are at least 40 years old based on their age. 29 U.S.C. §§ 623(a)(1), 631(a); Sims v. MVM, Inc., 704 F.3d 1327, 1331 (11th Cir. 2013). Its purpose is preventing arbitrary discrimination against older employees who are able to perform their jobs. 29 U.S.C. § 621.

A plaintiff can establish her age discrimination case by satisfying the framework created in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 (1973). See Damon, 196 F.3d at 1361; Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 142 (2000). This framework allows circumstantial evidence of the decisionmaker's discriminatory animus for which there is rarely direct evidence. See Wright v. Southland Corp., 187 F.3d 1287, 1290 (11th Cir. 1999). After the plaintiff establishes her prima facie case by showing that her employer treated a similarly situated employee outside of her protected class differently than her, the employer must rebut the presumption of discrimination by producing a legitimate, nondiscriminatory reason for firing her. See Damon, 196 F.3d at 1361; Tidwell v. Carter Prods., 135 F.3d 1422, 1426 (11th Cir. 1998). The plaintiff must demonstrate that the proffered reasons are more likely than not mere pretext for age discrimination. See Damon, 196 F.3d at 1361; Gross v. FBL Fin. Servs., 557 U.S. 167, 177–78 (2009).

I. Summary judgment should be reversed because a reasonable jury could infer that Kile's age, not WGCX-JAX's inconsistent and reasonably dubious concerns about ratings and cooperation with appearance directives, more likely than not motivated her termination.

To defeat summary judgment on her ADEA claim, a plaintiff must establish pretext by creating reasonable disbelief in the employer's proffered reasons and showing age discrimination

more likely than not was its actual motive. See St. Mary's Honor Ctr. v. Hicks, 509 U.S. 503, 515 (1993); Combs, 106 F.3d at 1529 (explaining that the 11th Circuit follows the Hicks pretext rule); Gross, 557 U.S. at 177–78 (holding age must be the more likely than not "but-for" cause). This entitles the plaintiff to present her case to a jury, which may then conclude that the employer unlawfully discriminated against her. See Combs, 106 F.3d at 1534; Reeves, 530 U.S. at 148. Since Kile created reasonable disbelief in WGCX-JAX's proffered reasons for firing her and showed that its actual reason was more likely than not ageism, she has presented a genuine dispute of material fact such that summary judgment should be reversed. See Combs, 106 F.3d at 1529; Fed. R. Civ. P. 56(a).

A. WGCX-JAX's inconsistent use of ratings in assigning anchor roles and appearance directives and its disconnected actions regarding Kile's cooperation status show its proffered termination reasons as more likely than not pretextual.

The plaintiff can discredit the employer's proffered reasons as more likely than not pretextual by demonstrating weaknesses and inconsistencies therein. See Combs, 106 F.3d at 1538; Tex. Dep't of Cmty. Affs. v. Burdine, 450 U.S. 248, 256 (1981). The evidence must create reasonable disbelief in all the proffered reasons. See Combs, 106 F.3d at 1529, 1543 (upholding summary judgment for employer because one of three nondiscriminatory reasons was not in dispute).

The employer's inconsistent use of selected criteria in business decisions undermines its claimed reliance on those criteria for terminating the employee. See Combs, 106 F.3d at 1538; Chapman v. AI Transp., 229 F.3d 1012, 1033–34 (11th Cir. 2000). Subjective criteria, like appearance in public-facing roles, may be legitimate nondiscriminatory reasons only if they have a clear, specific factual basis. See Chapman, 229 F.3d at 1033–34. Inconsistencies in the factual basis preclude the legitimacy of the subjective criteria as a nondiscriminatory reason. See id. at

1036; Combs, 106 F.3d at 1538. The employer's inconsistent use of allegedly prioritized criteria in its decisions reveals the criteria-based reason for the termination to be pretextual. See Combs, 106 F.3d at 1538; Chapman, 229 F.3d at 1033–34.

Similarly, a decisionmaker's actions irrespective of an employee's compliance with work rules bely his claim that her compliance was determinative for her employment. See Combs, 106 F.3d at 1538; Damon, 196 F.3d at 1363. In Damon, the court reversed summary judgment for the employer when the employee demonstrated his compliance with rules under which the supervisor punished and terminated him for alleged violations. 196 F.3d at 1362, 1363. Disconnect between allegedly corrective actions and the employee's compliance status allow a jury to infer that noncompliance is a pretextual reason. See id. at 1363; Combs, 106 F.3d at 1538.

WGCX-JAX's inconsistent use of ratings in its decisions undermines its claim that concern for ratings motivated Kile's termination. See Combs, 106 F.3d at 1538; Chapman, 229 F.3d at 1034–34. WGCX-JAX considered Kile's superior ratings among a target demographic in her demotion to the programs frequently watched by that demographic. (R. 32, 35.) However, Napier later fired her from those programs, presenting an inconsistency in that ratings concern. See Combs, 106 F.3d at 1538; (R. 39.) Broadcasting, a public-facing industry, puts significant weight on appearance, which is a legitimate subjective criterion if based in clear facts. See Chapman, 229 F.3d at 1034. However, the inconsistent application of ratings to the appearance directives precludes the legitimacy of appearance as a nondiscriminatory reason. See id. Napier emphasized the opinions inferred from the survey to require a full makeover for Kile, but dismissed viewers' direct comments from that same survey about Quint's clothing choices. (R. 24.) Napier's inconsistent use of allegedly prioritized ratings in the anchor assignments and

directives reveals the ratings-based reason for Kile's termination is pretextual. See Combs, 106 F.3d at 1538; Chapman, 229 F.3d at 1034–34.

Napier's actions irrespective of Kile's cooperation with his directives bely his claim that her cooperation was determinative for her employment. See Combs, 106 F.3d at 1538; Damon, 196 F.3d at 1363. Like the punishment for the employee while in compliance with the rules in Damon, Napier demoted Kile while she was in compliance with his directives and even making changes with which she was initially uncomfortable. 196 F.3d at 1363; (R. 14–15.) Although Kile was no longer cooperating when Napier fired her, Napier waited two months to punish that noncooperation, of which Kile gave him notice. (R. 15, 18.) The disconnect between Kile's cooperation status and her demotion and termination allows a jury to infer that her noncooperation is a pretextual reason. See Combs, 106 F.3d at 1538; Damon, 196 F.3d at 1363.

Kile has created reasonable disbelief in WGCX-JAX's two proffered reasons for firing her, thus discrediting them and satisfying the first requirement of the pretext burden. See Combs, 106 F.3d at 1529, 1538; Burdine, 450 U.S. at 256.

B. Kile's age more likely than not motivated her termination based on Napier's temporally significant ageist statements, Kile's singularly intensive appearance directives, and a wider pattern of ageist behavior at WGCX-JAX.

Ageist statements contributing to the decision-making process allow a jury to infer that ageism more likely than not motivated the plaintiff's termination. See Damon, 196 F.3d at 1362; Wright, 187 F.3d at 1304. Disparaging statements by decisionmakers connecting the employee's age to her perceived ability to perform her job are especially probative evidence of age-based discrimination in the termination, even when made three months prior. See Wright, 187 F.3d at 1292, 1303–1304. The statements' substance, timing, and context are particularly important. See Damon, 196 F.3d at 1362. In Damon, the court found that a jury could infer discriminatory

animus from the supervisor's statements to a younger manager expressing a preference for promoting younger managers that were made within a few months of the termination of two older managers. Id. at 1362–63. Such statements offer insight into the decisionmaker's state of mind during the decision-making process. See id. at 1359; Wright, 187 F.3d at 1304. Alternatively, comments made several months prior by persons uninvolved with the termination decision are irrelevant stray remarks, especially if they cannot suggest age affected the decision. See Tidwell, 135 F.3d at 1427. Decisionmaker statements displaying ageist preference around the time of the termination indicate age animus more likely than not motivated the termination decision. See Damon, 196 F.3d at 1362; Wright, 187 F.3d at 1304.

Unequal application of work rules to similarly situated younger employees suggests the decisionmaker more likely than not discriminated against the plaintiff for her age. See Damon, 196 F.3d at 1364; Lathem v. Dep't of Child. & Youth Servs., 172 F.3d 786, 790 (11th Cir. 1999). The Lathem court found the terminated female plaintiff's evidence of male coworkers committing greater infractions of the same policy without punishment supported the district court's denial of her employer's motion for summary judgment. 172 F.3d at 790. Similarly, in Damon, the court found evidence of age discrimination in the supervisor's tendency to give more lenient corrective work to younger managers. 196 F.3d at 1364 (reversing summary judgment for employer). While some younger managers with poor store conditions received no reprimand and kept their positions, older managers with similar or better stores were harshly reprimanded or even terminated. Id. A jury can infer from the decisionmaker's disparate rule application favoring younger employees that the decisionmaker more likely than not fired the plaintiff because of her age. See id.; Lathem, 172 F.3d at 790.

An employer's wider pattern of age-based discrimination supports a jury's reasonable inference that age animus more likely than not motivated the plaintiff's termination. See Damon, 196 F.3d at 1361; Ross v. Rhodes Furniture, Inc., 146 F.3d 1286, 1292 (11th Cir. 1998). This includes a pattern of replacing older employees with younger employees by the relevant decision-maker in a short time period. See Damon, 196 F.3d at 1361; but see Tidwell, 135 F.3d at 1424 (holding that there was no pretext when the employer closed the plaintiff's office during a nationwide layoff because the employer kept multiple older employees over their younger counterparts). Older employees with unblemished performance records suddenly receiving poor evaluations from the new supervisor also supports this pattern. See Damon, 196 F.3d at 1361. Even a discriminatory remark made by the decisionmaker long before the termination factors into the pattern. See Ross, 146 F.3d at 1292 (holding a supervisor's racial remark about employees three years before the African-American plaintiff's termination, paired with the discriminatory pattern, supported the jury's finding of pretext). Discriminatory treatment of other older employees is also relevant to analyzing the challenged termination. See Damon, 196 F.3d at 1366. If the employer has engaged in a wider pattern of age-based discrimination, a jury may reasonably find that the reasons for the plaintiff's termination are pretext for ageism. See id. at 1361; Ross, 146 F.3d at 1292.

Given the ageist statements at key points in Napier's decision-making process, a jury could find that ageism more likely than not motivated Kile's termination. See Damon, 196 F.3d at 1362; Wright, 187 F.3d at 1304. While speaking to a sponsor three months before Kile's termination, Napier called Kile "an old cow" with "washed-up" abilities in contrast to her younger replacement. (R. 47.) Even if these statements do not meet the Wright standard, their temporal proximity to Kile's termination, ageist substance, and work-related context meet the

Damon standard for jury inferences of discrimination. See Damon, 196 F.3d at 1362; Wright, 187 F.3d at 1304. Moreover, they cannot be stray remarks, notwithstanding Napier's excuse, because of Napier's role as the relevant decisionmaker and his expressed ageist preference. See Tidwell, 135 F.3d at 1427; Combs, 106 F.3d at 1524 (explaining all factual inferences must favor the non-movant). Although Quint and Wane, who made disparaging statements explicitly connecting Kile's age and perceived ability to anchor, are not decisionmakers, Napier solicited their input in connection to the decision-making process—Quint after her expressed interest in Kile's role and Wane during Kile's employee evaluation. (R. 28, 30.) This offers insight as to Napier's state of mind during the decision-making process. See Damon, 196 F.3d at 1359; Wright, 187 F.3d at 1304. The ageist statements about Kile made and solicited by Napier preceding her termination indicate age animus more likely than not motivated Napier's decision to fire her. See Damon, 196 F.3d at 1362; Wright, 187 F.3d at 1304.

The age-disparate application of appearance directives to anchors highlights that Napier more likely than not discriminated against Kile for her age. See Damon, 196 F.3d at 1364; Lathem, 172 F.3d at 790. Like the employee in Lathem who received the harshest punishment for a smaller infraction, Kile received the most time- and effort-intensive appearance directives despite not being the lowest-ranked anchor. 172 F.3d at 790; (R. 24–25, 35.) Like the supervisor in Damon who assigned less corrective work to younger, lower-performing employees, Napier assigned less corrective work to younger anchors who performed worse than Kile among certain categories in the survey. 196 F.3d at 1364; (R. 24, 35.) Given Napier's disparate appearance directives favoring employees younger than Kile, a jury can infer that he more likely than not fired Kile because of her age. See Damon, 196 F.3d at 1364; Lathem, 172 F.3d at 790.

WGCX-JAX's wider pattern of age-based discrimination supports the reasonable inference that age animus more likely than not motivated Kile's termination. See Damon, 196 F.3d at 1361; Ross, 146 F.3d at 1292. Within three months, Napier demoted and terminated Kile, replacing her with only younger anchors. (R. 37–40.) This constitutes a targeted pattern of age-based replacement in a short time period. See Damon, 196 F.3d at 1361; Tidwell, 135 F.3d at 1424. Like the older employees with previously unblemished performance records in Damon, Kile had received only positive evaluations prior to Napier's arrival and evaluations. 196 F.3d at 1361; (R. 16.) Additionally, Napier had a long history of ageist remarks during his first year at WGCX-JAX. See Ross, 146 F.3d at 1292. Napier's first reaction to seeing Kile work was to comment on her age and appearance. (R. 44.) He also repeatedly dismissed the negative viewer opinions of Quint by belittling the viewers based on their presumed age. (R. 24, 44.) The consultants Napier hired for Kile also mirrored Napier's ageist language. (R. 46.) Furthermore, Wane, Kile's older co-anchor, underwent a facelift only after Napier's predecessor urged him to remedy his tired appearance, evidencing a precedent of discriminatory treatment against older anchors. See Damon, 196 F.3d at 1366; (R. 29.) Given the wider pattern of age-based discrimination at WGCX-JAX, a jury may reasonably find that its reasons for firing Kile are pretext for ageism. See Damon, 196 F.3d at 1361; Ross, 146 F.3d at 1292.

CONCLUSION

Because Kile has presented sufficient evidence for a jury to find that her age, not WCGX-JAX's proffered pretextual reasons, more likely than not motivated her termination, summary judgment in favor of WGCX-JAX should be reversed. Fed. R. Civ. P. 56(a); see Damon, 196 F.3d at 1357.

Applicant Details

First Name	**Madison**
Middle Initial	**M**
Last Name	**Pepe**
Citizenship Status	**U. S. Citizen**
Email Address	**mp1880@georgetown.edu**
Address	**Address** Street **11027 Scotts Landing Road** City **Laurel** State/Territory **Maryland** Zip **20723** Country **United States**
Contact Phone Number	**3018217583**

Applicant Education

BA/BS From	**University of Delaware**
Date of BA/BS	**May 2021**
JD/LLB From	**Georgetown University Law Center** **https://www.nalplawschools.org/employer_profile?FormID=961**
Date of JD/LLB	**May 5, 2024**
Class Rank	**School does not rank**
Does the law school have a Law Review/Journal?	**Yes**
Law Review/Journal	**No**
Moot Court Experience	**No**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**Yes**
Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Peguero, Robin
robin.peguero@georgetown.edu
Thompson, Robert
rbt5@georgetown.edu
Berger, Jennifer
Jennifer.berger@dc.gov

This applicant has certified that all data entered in this profile and any application documents are true and correct.

MADISON M. PEPE
301-821-7583 • Washington, DC • Mp1880@georgetown.edu

The Honorable Juan R. Sanchez
James A. Byrne U.S. Courthouse
601 Market Street
Philadelphia, PA 19106

Dear Judge Sanchez:

I am currently a rising third-year law student at Georgetown University Law Center, applying for a 2024-25 clerkship in your chambers. I am interested in this opportunity to start my legal career in the first capital of the United States. With my time as a Division 1 Cheerleader and my experience studying abroad, I will bring a fresh perspective, a strong work ethic, and passion for serving others to this work.

Being a member of the University of Delaware cheerleading team helped me advance my time management skills and cement a greater work ethic. As a Division 1 Athlete, I learned to balance a hectic schedule, while maintaining a strong academic performance. In my role as a cheerleader, I continuously demonstrated a positive, professional, and friendly attitude and demeanor during events and while interacting with fans.

During my time studying abroad in Granada, Spain, I lived entirely immersed in Spanish culture from the moment I stepped off the plane. From this I learned to adapt to new environments and gained an appreciation for other cultures and languages. My ability to adapt and appreciate other perspectives allows me to develop rapport with people from different backgrounds, and to meticulously analyze every factor of any given situation.

With all of my combined interests and experiences, I know I could add real value to your chambers and, I am interested in learning more about how the gears turn behind the scenes. Enclosed is my resume, transcripts, writing sample and recommendations. I can be reached at mp1880@georgetown.edu or (301) 821-7583. Thank you for your consideration, and I look forward to hearing from you.

Sincerely,

Madison Pepe

Enclosure(s)

MADISON M. PEPE
301-821-7583 • Washington, DC • mp1880@georgetown.edu

EDUCATION

The Georgetown University Law Center, Washington, DC — Expected May 2024
Juris Doctor
GPA: 3.57
Activities: Georgetown Law Teach-In Community and Outreach Director, Women's Legal Alliance Co-Professional Development & Alumni and 3L Relations Chair

The Catholic University of America, Columbus School of Law, Washington, DC — May 2022
First-year J.D. coursework completed
Class Rank: 7/102
Honors: Dean's List, Spring 2022
Journal: Law Review (Invitation extended), Journal of Law and Technology (Invitation extended)

University of Delaware, Newark, DE
Bachelor of Science in International Business and Finance, Minors in Spanish Studies and English — May 2021
Honors: Dean's List, Spring 2018, Fall 2019, Spring 2020, Spring 2021
Activities: University Cheerleading Team; NCAA Division 1 National Champion; Alpha Delta Pi, Theta Delta chapter

EXPERIENCE

Morris Nichols Arsht & Tunnell LLP, Wilmington, DE — May 2023 – Present
Summer Associate

Office of the Attorney General, Public Advocacy Division, Washington, DC — January 2023 – April 2023
Extern, Social Justice Section

- Drafted a declaration, demand, and an admission request for cases involving violations of the D.C. Housing Code
- Constructed arguments in a legal memorandum for potential consumer protection claims on novel issues of environmental law
- Compiled relevant information and conducted investigative research for attorneys in trial, on current cases, and potential cases

Circuit Court of Montgomery County, Rockville, MD — May 2022 – August 2022
Judicial Intern for The Honorable Judge Cheryl McCally

- Researched post-conviction claims of ineffective assistance of counsel to draft two judicial opinions
- Created timely summaries of current law, when relevant and applicable to a current case on the docket

Columbus Community Legal Services, Washington, DC — May 2022 – August 2022
Intern, Immigration and Refugee Advocacy Clinic

- Assisted two clients and their families in completion of applications to register permanent residence
- Secured sponsorship for client who was eligible for humanitarian parole
- Analyzed and organized asylum application materials for client fleeing abuse

High Swartz LLP, Philadelphia, PA — January 2020
Legal Job Shadow

- Shadowed family law attorneys interacting with clients in child custody negotiations and arbitration

LANGUAGE SKILLS & INTERESTS

- Proficient in Spanish
- Curating trendy wardrobes sustainably; advocating for diverse perspectives; cultural immersion on a budget

Record of: Madison Pepe
GUID: 807628165

Course Level: Juris Doctor

Transfer Credit:
Catholic University of America
School Total: 30.00
Entering Program:
Georgetown University Law Center
Juris Doctor
Major: Law

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Fall 2022							
LAWJ	121	02	Corporations Robert Thompson	4.00	A-	14.68	
LAWJ	165	02	Evidence Michael Pardo	4.00	A-	14.68	
LAWJ	215	09	Constitutional Law II: Individual Rights and Liberties Randy Barnett	4.00	B+	13.32	
LAWJ	230	08	International and Comparative Law on Women's Human Rights Susan Ross	2.00	B+	6.66	
LAWJ	3082	12	Dispute Settlement in International Trade: A Comparative Examination of WTO, Region & Bilateral Syst Jesse Kreier	2.00	A	8.00	

	EHrs	QHrs	QPts	GPA
Current	16.00	16.00	57.34	3.58
Cumulative	46.00	16.00	57.34	3.58

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Spring 2023							
LAWJ	025	05	Administrative Law	3.00	B+	9.99	
LAWJ	1491	14	Externship I Seminar (J.D. Externship Program)		NG		
LAWJ	1491	92	~Seminar	1.00	A-	3.67	
LAWJ	1491	94	~Fieldwork 3cr	3.00	P	0.00	
LAWJ	1521	05	Advanced Topics in Corporate Law: Corporate Transaction Litigation in Delaware		W		
LAWJ	361	02	Professional Responsibility: The American Legal Prof in the 21st Century: Tech, Markets, & Democracy	2.00	A-	7.34	
LAWJ	434	08	Mergers and Acquisitions	3.00	A-	11.01	

Transcript Totals

	EHrs	QHrs	QPts	GPA
Current	12.00	9.00	32.01	3.56
Annual	28.00	25.00	89.35	3.57
Cumulative	58.00	25.00	89.35	3.57

End of Juris Doctor Record

Georgetown Law
600 New Jersey Avenue, NW
Washington, DC 20001

June 11, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

Madison “Madi” Pepe is a hard-working, dynamic, and upbeat aspiring lawyer who cares deeply about the justice system and the people impacted by it. Any team – particularly one that values a strong work ethic paired with good nature and grace – would be lucky to have her. I give her my full-throated endorsement for the role of judicial clerk and am positive she would be a sterling addition to your chambers.

As an adjunct professor who taught Madi in a class of just twelve students, I had the opportunity to see how she led discussions with verve, deployed great effort and skill in drafting her written assignments, and listened actively and compassionately when her classmates were speaking. Right upon meeting her, it’s clear she possesses a keen intellect and an unmatched drive to do well. You don’t earn a transfer to a premier law school – rising to the top of your original class, securing a spot on the Dean’s List and an invitation to Law Review – without the intellectual chops to back it up. But aside from doing well, she wants just as much to do good. As a young girl, she watched her teenage brother get sentenced to 35 years in federal prison, and it is that life experience that fuels her commitment to the rule of law and lends her a depth of perspective that would be invaluable to any judge. The law isn’t a mere abstraction to her – it impacts real people in real time, and *great* clerks, over and above just *good* clerks, get that.

Her internship for a Maryland Circuit Court judge allowed her to burnish her skills researching caselaw, writing draft opinions, and keeping an open, inquisitive mind. She proved an asset to her judge by maintaining a healthy skepticism that fostered fresh ideas and asking probing questions that deepened her legal analysis. Her contributions in class were always thought-provoking but respectful, spirited but professional. She gets people thinking in a way that engenders good will. Part of putting together a team of clerks involves finding individuals adept at collaborating and whose dispositions gel. Madi is a congenial and positive force who brings out the best in others while being a joy to be around. You’ll undoubtedly come across a lot of smart candidates, but a smart candidate with impressive social gifts is harder to find. Madi is that ideal candidate.

Please do not hesitate to reach out to me if you have follow-up questions. I am always delighted to sing Madi’s praises.

Sincerely,

Robin M. Peguero
Adjunct Professor, Georgetown University Law Center
Chief of Staff, Congressman Glenn Ivey (MD-04)
Former Investigative Counsel, Select Committee Investigating Jan. 6th Attack on U.S. Capitol
Former Homicide Prosecutor, Miami-Dade State Attorney’s Office
Harvard College ’07, Harvard Law School ’14

Robin Peguero - robin.peguero@georgetown.edu

Georgetown Law
600 New Jersey Avenue, NW
Washington, DC 20001

June 11, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

I write to support the consideration of Madison (Madi) Pepe as a clerk in your chambers. She was a student in my corporations class last fall and mergers in the spring. They were large classes (about 115 in the fall and 70 in the spring) and she received an A- in each class. My notes on the exam indicate consistent positive performance. As the year began, she had just transferred from another school in town (where she had done well). More than many in that situation, she reached out during office hours to explore the new environment and talk about corporate law and litigation opportunities. Her questions reflected a willingness to engage the more complicated questions of corporate practice. I encourage you to review her resume and references to see if there might be a fit.

Sincerely,

Robert B. Thompson

Robert Thompson - rbt5@georgetown.edu

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL

ATTORNEY GENERAL BRIAN L. SCHWALB

June 11, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

Please accept my enthusiastic recommendation of Madi Pepe for a judicial clerkship. This reference is through the lens of my having appeared hundreds of times before judges in the District of Columbia Superior Court and Maryland District and Circuit Courts, and several times in Federal District Court and Federal Bankruptcy Court in both jurisdictions.

Ms. Pepe was an extern with the Social Justice Section of the Public Advocacy Division of the District of Columbia Office of the Attorney General from mid-January 2023 through the present. The Social Justice Section enforces laws that protect the environment and housing of District of Columbia residents. Madi is an important team member. She attends both larger team meetings and litigation team meetings. Madi helped the trial team for a mid-February trial with essential research as to the background of contractors who performed work at the property. She also researched witness and defendant litigation histories on court websites, discerning what information was important to our litigation goals. As a result, we introduced key evidence of the lack of proper licensure of six contractors the owner hired to work at the property.

Madi helped with discovery in other cases, crafting admissions requests, sifting through multiple Metropolitan Police Department reports to craft a narrative for a court complaint, and drafting deposition questions. Madi also interviewed multiple tenants to craft declarations to support summary judgment and other motions in two litigation matters. She conducted local and Federal environmental research and recommendations around air pollution issues like vehicle idling and gas stoves.

As a 19-year manager, I recognize that you can teach someone technical skills, but teaching interpersonal skills like humility and collaboration is much harder. Madi is an avid learner, and never too humble to ask the right questions to get assignments done correctly. She is a polite yet direct communicator, and works very well with other team members, including the other interns. Madi is highly professional and has a wonderful sense of self and sense of humor. As a professional who has interacted with the judiciary in the form of litigation appearances, judicial conference presentations and referrals from the Bench, I am confident that Madi will be an asset to any judge with whom she clerks.

Please contact me at Jennifer.Berger@dc.gov if you have any questions regarding this letter.

Sincerely,

JENNIFER L. BERGER
Chief, Social Justice Section
Public Advocacy Division
400 6th Street NW, 10th Floor
Washington, D.C. 20001
(202) 531-2917 (phone)
Email: Jennifer.Berger@dc.gov

MADISON M. PEPE
301-821-7583 • Washington, DC • mp1880@georgetown.edu

Writing Sample

The attached writing sample is a memorandum I drafted this spring, 2023, for my externship at the Office of the Attorney General for the District of Columbia. The assignment was to research potential claims against gas stove manufacturers under the consumer protection laws of DC. Specifically, whether the manufacturers could be held liable for misrepresentation for failing to properly label their gas stoves with warnings about the risks to human health, specifically to children, posed by their use.

This sample has been modified to remove all confidential information. For brevity, the appendix, which contained examples directly from gas stove manufacturer's manuals, has been removed.

MEMORANDUM

To: XXX
From: Madison Pepe
Date: March 30, 2023
RE: CPPA Claim against Gas Stove Manufacturers for inadequate labeling

BACKGROUND

Gas stoves have a reputation of being more efficient, durable, and cheaper than electric stoves. Recently, however gas stoves have been the subject of expanding concern. The Consumer Product Safety Commission has released a request for information regarding hazards associated with gas stoves, and the U.S. Department of Energy has proposed new energy conservation standards for consumer cooking products.

Growing evidence has shown gas stoves fill homes with hazardous air pollutants that cause serious health impacts to families and children. Gas stoves have been found to emit harmful levels of Carbon monoxide, Particulate Matter, Nitrogen Dioxide, Nitric Oxide, and Formaldehyde. Although Carbon monoxide exposure has been commonly recognized as a risk factor of these stoves, manufacturers fail to acknowledge the abundance of others hazardous gasses.[1] Carbon monoxide detectors are a modern-day attempt to address the danger associated with exposure, but the threshold for the alarm to sound is high, and only occur after prolonged exposure.

In addition to the environmental impact, these hazardous gasses can cause a variety of health problems, particularly in children, who are more susceptible to illnesses associated with air pollution, like asthma. This is a result of children's higher breathing rates, greater physical activity, higher lung surface to body weight ratios, and immature respiratory systems.[2] A meta-

[1] *See* Appendix 1-3.
[2] https://rmi.org/insight/gas-stoves-pollution-health/

analysis looking at the association between gas stoves and childhood asthma found children in homes with gas stoves have a 42% increased risk of experiencing asthma symptoms.[3]

This poses a particularly dangerous blindside regarding indoor air quality, which tends to have higher concentrations of hazardous gasses then the allowance outdoors. Additionally, people in the US spend 90% of their time indoors, yet the United States does not regulate indoor air quality.[4] To demonstrate the abnormality, the guidelines set by the World Health Organization for indoor nitrogen dioxide levels is a one-hour average of 106 ppb. Compare this to baking a cake in a gas-powered oven, which has a peak of 230 ppb.[5]

The negative impacts of gas stoves are amplified in low-income households that tend to be in more polluted areas, cannot afford replacement stoves, don't have access to the information about the risks, or who may potentially use the stoves as a heat source. Furthermore, home dynamics can directly influence household exposure to indoor air pollution such as smaller unit size, more occupant density, and inadequate ventilation.[6]

This problem can begin to be addressed with proper labeling from gas stove manufacturers. Proper labels can help educate the public and bring awareness to consumers of the harm they are unintentionally subjecting themselves and their children to. Current manufacturers of gas stoves do not warn about the health risks posed when using their product.[7] Many gas appliances instruct

[3] Weiwei Lin, Bert Brunekreef, and Ulrike Gehring, "Meta-analysis of the effects of indoor nitrogen dioxide and gas cooking on asthma and wheeze in children," *International Journal of Epidemiology*, Volume 42, Issue 6, (December 2013): 1724–1737, https://doi.org/10.1093/ije/dyt150.

[4] https://rmi.org/insight/gas-stoves-pollution-health/
[5] *Id.*

[6] Gary Adamkiewicz et al., "Moving Environmental Justice Indoors: Understanding Structural Influences on Residential Exposure Patterns in Low-Income Communities," *American Journal of Public Health*. 2011, https://www.ncbi.nlm.nih.gov/ pubmed/21836112#.

[7] *See* Appendix 1-3.

the users to use proper ventilation, but there is no uniform venting requirement for gas stoves, unlike gas furnaces or gas dryers. Although venting can reduce pollutant levels, many homes do not have proper exhaust hoods that vent outdoors, or people largely do not feel they are needed.[8]

Even with proper use of ventilation, exposure levels of these harmful pollutants are not eliminated completely, and ventilation cannot be solely relied on as a strategy to minimize exposure. Furthermore, gas stoves are not currently required to meet any voluntary or mandatory safety or performance standards.[9] Current gas stove manuals warn against the harm to pet birds that could be caused by the fumes given off by the gas stove, potential fires, explosions or property damage.[10] They also warn against using the appliance as a space heater, because it may result in carbon monoxide poisoning.[11] They admit that gas appliances cause minor exposure to benzene, carbon monoxide, formaldehyde, and soot, but claim this is only by incomplete combustion of natural gas, that can be minimized by venting.[12]

Regulating gas stoves would not directly enact a complete ban. Regulation could focus on allowing consumers to make an informed choice, considering all the risks. The District could require manufacturers to list all potential hazardous gasses, acknowledge inevitable exposure to them, and to disclose the specific health hazards associated with them, especially prolonged periods and to children. Failure to do this could constitute unfair or deceptive trade practices.

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[8] Nate Seltenrich, "Take Care in the Kitchen: Avoiding Cooking-Related Pollutants," *Environmental Health Perspectives* Volume 122, No. 6, 2014, https://ehp.niehs.nih.gov/ doi/10.1289/ehp.122-A154.

[9] https://rmi.org/gas-stoves-health-climate-asthma-risk/
[10] *See* Appendix 1-3.

[11] *Id.*
[12] *Id.*

QUESTION PRESENTED

Under the Consumer Protection Laws for The District of Columbia, D.C. Code § 28-3904, does the District have a claim of misrepresentation or omission, when the manufacturers of gas stoves fail to provide sufficient labeling and to mention the harmful gas emission and health risks created by the use thereof, especially to children?

DISCUSSION

The District of Columbia Code § 28-3904 prohibits unfair or deceptive trade practices in the district. It is a violation of the code "for any person to engage in an unfair or deceptive trade practice, whether or not any consumer is in fact misled, deceived, or damaged thereby," including to misrepresent as, or fail to state as to a material fact which has the tendency to mislead.[13]

Standing & Jurisdiction

The Attorney General for the District of Columbia is specifically authorized to enforce the District's consumer protection laws and has standing to bring claims on behalf of district residents, who are advertised, sold, and use these stoves.[14]

Misrepresentation or Omission

The District would first need to prove that the gas stove manufacturers misrepresented the health risks associated with gas stove use. The District will not need to prove that the misrepresentation or omission was intentional, or that consumers were damaged by the misrepresentation or omission.[15]

[13] *Id*.
[14] D.C. Code § 28-3909.
[15] *Frankeny v. Dist. Hosp. Partners, LP*, 225 A.3d 999, 1008.

In *Hackman v. Safeway*, the Plaintiff challenged two baby food products, which were represented as a safe snack for babies and young children, but two tests done by the Plaintiff claimed the products were contaminated with heavy metals.[16] The Plaintiff alleges this practice is deceptive because "there is no practical way for them to know prior to purchase that the products are laden with heavy metals despite being marketed as safe and because the front of the packages tout the absence of any possibility that the products could have inherent dangerous impacts on any child."[17] The Superior Court found that the Plaintiffs factual allegations were sufficient to withstand a motion for summary judgement by alleging an enforceable right to truthful information under the law.[18]

In *District of Columbia v. Beech-Nut Nutrition Co.,* the District argued defendants violated the CPPA by misrepresenting and omitting material facts regarding the health and safety of its baby food products. The District asserted that health agencies have declared certain heavy metals to be dangerous to human health, and that two reports found toxic heavy metals in the Defendants baby food.[19] The Defendants allege truthful advertising regarding natural ingredients and high product safety tests, but the court found that a reasonable consumer can still find accurate statements misleading.[20] Defendants also argued, that no reasonable person would believe their products are free from heavy metals. This was unpersuasive because the plaintiffs in this case focused on the high and dangerous levels, which are not naturally occurring, thus the Defendants exceeded their internal limit.[21] The Superior court found that the District's case survived a motion for summary judgement.

[16] *Id*.
[17] *Id*.
[18] *Id*.
[19] *District of Columbia v. Beech-Nut Nutrition Co.*, 2021 D.C. Super. LEXIS 43, 1.
[20] *Id*.
[21] *District of Columbia v. Beech-Nut Nutrition Co.*, 2021 D.C. Super. LEXIS 43, 8.

Similar to *Hackman*, the labels and manuals currently provided are absent any mention that their product, gas stoves, could have inherent dangerous impacts on any person in the home, especially children. The District could argue there is no practical way for consumers to know there are various hazardous gasses emitted, because the manuals only mention that minor exposure is possible to only a few. Additionally, the listed risks these gasses pose are limited to harms to pet birds, fire, and property damage. When the manuals do mention harm that could be caused by the presence of gas, they only highlight carbon monoxide poisoning. The District could argue that consumers have an enforceable right to truthful information regarding what gasses are emitted and how they are particularly hazardous to children's health.

In contrast, the manufacturers could argue that *Hackman* involved baby food that is sold to be consumed by young children and babies, whereas gas stoves are not marketed to children, or to be used by children. Manufacturers could also argue that there are other practical ways for consumers to gain information regarding gas stove, outside of the manuals provided. Nevertheless, the unknown danger caused by the presence of heavy metals in baby food could be comparable to that caused by the variety of hazardous gasses emitted from gas stoves. They both pose an inherent threat to the health of children, and both manufacturers did not disclose this on the label.

Similar to *Beech-Nut Nutrition*, the District could argue that manufacturers do not list all potential gasses emitted from stoves, and that the gas emission causes home air pollution concentrations above the allowed outdoor levels. The District could also highlight those certain gasses have been found to be dangerous to human health, and the high levels of these gasses in the home is an unknown danger to the consumer.

In contrast to *Beech-Nut Nutrition*, manufacturers could argue that their manuals not only have truthful information, but they also mention the potential harmful gases that could be emitted from improper use of their stoves, and that they pose risks. Manufacturers could also argue that no reasonable person would assume gas powered stoves emit no gasses that pose a risk to human health.

The District could argue that the lack of labeling on gas stoves equates to a misrepresentation that they don't pose specialized health risks to children or their families. The District could also argue that manufactures omitted this important information about the various gasses emitted from gas stoves and the health risks associated with them. The manufacturers could also argue that they truthfully disclose the harmful gasses that could be emitted, and they did not misrepresent or omit the health risks associated with these gasses. Based on these facts, the court will be somewhat likely to find that the District sufficiently alleged facts to survive a motion for summary judgement that there was omission and misrepresentation.

Material Fact

Next, the District will need to show the misrepresented or omitted fact was material. The District will need to prove that the health effects, particularly to children, caused by the gasses from using gas stoves, is material. In determining whether an omission is "material," the D.C. Court of Appeals adopted a reasonable person standard. Specifically, whether a reasonable person "would attach importance to its existence or nonexistence in determining his [or her] choice of action in the transaction in question or the maker of the representation knows or has reason to know that the recipient likely regard[s] the matter as important in determining his or her choice of action." [22]

[22] *District of Columbia v. Beech-Nut Nutrition Co.*, 2021 D.C. Super. LEXIS 43, 5 (quoting *Frankeny*, 225 A.3d at 1005).

In *Saucier v. Countrywide Home Loans*, Saucier claimed that by providing the loans, Countrywide affirmatively misrepresented the fact that housing loans they provided met Federal Housing Administration requirements, that the transactions were legitimate, and that the units they were buying had been fully rehabilitated and were worth the purchase prices. [23] An Informed Consumer Choice Disclosure Notice is designed to make a potential condo unit purchaser "aware of possible choices in financing" by comparing FHA fixed rate financing with conventional fixed rate financing, to mortgage insurance. In this case, there was no duty to provide such notice, therefore it was not provided.[24] Despite this, the D.C. Court of Appeals found the notice is material because "a significant number of unsophisticated consumers could find the information [in the notice] important in determining a course of action regarding their purchase of a condo unit."[25]

The District could argue that the health risks to children caused by the hazardous gasses emitted from gas stoves, is something a reasonable person would find important in deciding whether to purchase gas or electric. Similar to *Saucier*, the District could argue that by mentioning some or none of the gasses and hazards related to the stoves, that the manufacturers are misrepresenting that the stoves are otherwise not hazardous and don't release other gasses. The District could highlight that that lack of notice provided to loan recipients in *Saucier* is comparable to the lack of information regarding the hazards of gas stoves provided to consumers in the stove manuals, because a significant number of consumers would find this information important in their decision. Furthermore, the District could argue that the omission of any information regarding human and child health risks is material.

[23] *Saucier v. Countrywide Home Loans*, 64 A.3d 428, 445.
[24] *Id*.
[25] *Saucier v. Countrywide Home Loans*, 64 A.3d 428, 445.

However, the manufacturers could argue that *Saucier* is distinguishable because the notice that wasn't provided was a standard form that was required by the FHA in most housing loan negotiations, and they do not have a similar requirement. Based on these facts, the court will be somewhat likely finding the District sufficiently alleged facts to survive summary judgement, that the risk to human health, particularly in children, is material.

Tendency to Mislead

Lastly, the District will have to show that the misrepresentation or omission of the material fact had a tendency to mislead. The District will need to prove that not sufficiently labeling the health risks associated with gas stoves has a tendency for consumers to be misled. Typically, statements that are true won't tend to mislead, but courts have recognized in limited circumstance that reasonable consumers can find accurate statements misleading.[26] Additionally, the D.C. Court of Appeals held, plaintiffs are not required "to plead and to prove a duty to disclose information."[27]

The District in *Beech-Nut Nutrition* alleged the Defendants failed to disclose the high levels of metal in their baby food and the harmful effects for those metals.[28] Defendants assert the omissions do not mislead because their products are not 'unfit for normal use,' and there is no duty to test for them.[29] Furthermore, the Defendants rely on a Massachusetts case, *Tomasella v. Nestlé USA, Inc.*, where the court found an omission about child labor practices in the supply chain for cocoa did not render the chocolate unfit.[30] The Superior Court rejects this argument, because there is a closer tie between ingredients in baby food, than labor practices with food.[31]

[26] *Nat'l Consumers League v. Gerber Prods. Co.*, 2015 D.C. Super. LEXIS 10, 28.
[27] *Saucier*, 64 A.3d at 443.
[28] *Id*.
[29] *Id*.
[30] *Tomasella v. Nestlé USA, Inc.*, 962 F.3d 60, 74 (1st Cir. 2020).
[31] *District of Columbia v. Beech-Nut Nutrition Co.*, 2021 D.C. Super. LEXIS 43, 11.

Additionally, the CPPA removes the need for a duty to disclose information in order to bring a claim. The court found the claim alleged sufficient facts to survive a motion for summary judgment.

In *Hackman v. Safeway*, the Superior Court stated that claims rely on whether the Defendants' product labeling about the characteristics, ingredients, or appropriate uses of the products would be misleading to the average consumer.[32] This successfully rebutted the Defendants claims that this issue should be handled by agency administrators, and the court found this was not an area where the FDA experts would be more suited.[33]

Similar to *Beech-Nut*, the District could argue the manufacturers failed to disclose all of the harmful gasses their stoves emit, and the health effects from exposure to those gasses, therefore the omission is misleading. The District could further argue that gas emission when cooking on a gas-powered stove is similar to ingredients in baby food because they both are inherent and represent an essential part of the product.

In contrast to *Beech-Nut*, manufacturers could argue that, although gas powers the stoves, the tie between health risks from extensive exposure to specific gasses and correct use of the gas stove with adequate ventilation, is nominal.

Similar to *Hackman*, the District could argue their claims rely on the sufficiency of product labeling and whether it is misleading to the average consumer, thus violating consumer protection laws of the District. The manufacturers could argue that the characteristics, ingredients, and proper use is not at issue here, and that the District's claims surround the idea of misrepresenting an inherent danger produced by the product, which may be better addressed elsewhere. The District could rebut by highlighting that emitting hazardous gas is inevitable

[32] *Hackman v. Safeway, Inc.*, 2022 D.C. Super. LEXIS 31, 15.
[33] *Id*.

when properly using the products, and the health hazards associated with the abundance of emitted gas are characteristics associated with using gas stoves, as opposed to electric.

Based on these facts, the court will be somewhat likely to find the District sufficiently alleged facts to survive summary judgement, that there was a tendency to mislead.

CONCLUSION

As a result of the evidence that follows and the District Consumer Protection laws, the District will be likely to survive a motion for summary judgement by alleging that gas stove manufacturers misrepresented and omitted material facts that have a tendency to mislead when they failed to adequately label their gas stoves as to the potential hazardous gasses emitted and the health risks created, especially to children, when using their product.

The most challenging element will be showing the misrepresentation or omission. The most persuasive evidence the District could present is data relating to what gasses are emitted from the stoves, how much is emitted, and how it effects the health of children. If the District can persuade a court that this information is material, and emphasize that consumers are unaware otherwise, a court may be inclined to find that the manufacturers' fragmented and omitted information violates the statute.

Applicant Details

First Name	**Clare**
Middle Initial	**D**
Last Name	**Perez**
Citizenship Status	**U. S. Citizen**
Email Address	**cdp74@georgetown.edu**
Address	**Address** Street **1234 Massachusetts Avenue NW, Apt 516** City **Washington** State/Territory **District of Columbia** Zip **20005** Country **United States**
Contact Phone Number	**773-726-0732**

Applicant Education

BA/BS From	**Swarthmore College**
Date of BA/BS	**May 2018**
JD/LLB From	**Georgetown University Law Center** **https://www.nalplawschools.org/employer_profile?FormID=961**
Date of JD/LLB	**May 19, 2024**
Class Rank	**School does not rank**
Law Review/Journal	**Yes**
Journal(s)	**Georgetown Journal of Poverty Law and Policy**
Moot Court Experience	**No**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**Yes**
Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Sirota, Rima
rs367@law.georgetown.edu
(202) 353-7531
O'Sullivan, Julie
osullij1@law.georgetown.edu
Spann, Girardeau
spann@law.georgetown.edu
202-662-9103

This applicant has certified that all data entered in this profile and any application documents are true and correct.

CLARE PEREZ
1234 Massachusetts Ave NW Washington, DC 20005• (773) 726-0732 • cdp74@georgetown.edu

The Honorable Juan R. Sánchez
United States District Court for the Eastern District of Pennsylvania
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106

Dear Judge Sánchez,

I am a rising third-year student at Georgetown University Law Center and am writing to express my sincere interest in serving as one of your law clerks for the 2024-2025 term. As an aspiring plaintiff-side attorney with extensive federal civil litigation experience both prior to and during law school, including as a paralegal at a small civil rights employment law firm, I believe I would make a strong addition to your chambers. Judge Restrepo is a good family friend of mine and he spoke very highly of you and encouraged me to apply to your chambers.

As a paralegal, I gained invaluable exposure to the federal and state court systems, civil litigation, and motions practice. During law school, I strengthened the skills needed to be an effective litigator through a judicial internship with Magistrate Judge Zia Faruqui in the D.C. District Court and a year-long externship with the Department of Justice's Civil Rights Division. As a summer associate at Lieff Cabraser Heimann & Bernstein this summer, and as a student attorney with the Civil Rights Litigation Clinic in the Spring of 2024, I will employ my writing and advocacy skills, strengthen my understanding of complex civil litigation, and explore new practice areas. I will bring this legal knowledge with me into a clerkship experience, in addition to the many relevant skills I learned as a college athlete at Swarthmore College, including time management, attention to detail, leadership, and discipline.

My resume, unofficial transcript, and my writing sample are submitted with this application. Letters of recommendation from Professors Julie O'Sullivan (Julie.OSullivan@law.georgetown.edu), Girardeau Spann (spann@georgetown.edu), and Rima Sirota (Rima.Sirota@law.georgetown.edu) are also attached.

I plan to return to Philadelphia to practice law, a city I got to know and love during my time at Swarthmore College, and an opportunity to clerk in your chambers and get to know the local legal community would be instrumental in my career. I would welcome the opportunity to interview with you, and I look forward to hearing from you soon.

Sincerely,
Clare Perez

CLARE PEREZ

1234 Massachusetts Ave NW, Apt 516 Washington, DC 20005 • (773) 726-0732 • cdp74@georgetown.edu

EDUCATION

GEORGETOWN UNIVERSITY LAW CENTER **Washington, DC**

Juris Doctor GPA: 3.83 (top 10%, Dean's List 2021-2022, 2022-2023) Expected May 2024

Activities: *Georgetown Journal on Poverty Law & Policy* (Online Managing Editor for Volume 31, Staff Editor for Volume 30), Georgetown Civil Rights Clinic (Student Attorney, expected Spring 2024), Research Assistant for Professor Julie O'Sullivan (June-August 2022), Public Interest Fellow, Contracts Tutor, Administrative Assistant at the Office of Student Life, Latin American Law Students Association (Social Committee)

Awards: Cuban American Bar Association (CABA) Academic Scholarship 2022, CALI Excellence for the Future Award® (highest grade) for Contracts (Fall 2021)

Pro Bono: Georgetown Law Special Pro Bono Pledge Recognition, Washington Lawyers Committee Workers' Clinics (June 2022-May 2023), Court Appointed Special Advocate (CASA) for Children (September 2019-June 2022)

SWARTHMORE COLLEGE **Swarthmore, PA**

Bachelor of Arts Political Science; Minors in Peace and Conflict Studies and Spanish May 2018

Activities: Captain and Member of the Varsity Field Hockey Team, "Inside Out" Prison Exchange Program, Title IX Advisory Team Member, Student Government Chair of Student Life

Awards: NCAA Centennial Conference Academic Honor Roll

EXPERIENCE

LIEFF, CABRASER, HEIMANN & BERNSTEIN LLP **San Francisco, CA**

Summer Associate June 2023-Present

- Providing legal research and writing, including motion and memoranda writing, in support of antitrust, consumer protection, mass torts, and employment discrimination class action litigation.

U.S. DEP'T OF JUSTICE, CIVIL RIGHTS DIVISION, IMMIGRANT EMPLOYEE RIGHTS **Washington, DC**

Legal Extern January 2023-April 2023

- Assisted attorneys in enforcing and investigating alleged violations of the anti-discrimination provision of the Immigration and Nationality Act (INA), 8 U.S.C. § 1342b, conducted legal research, and prepared legal memoranda.

U.S. DEP'T OF JUSTICE, CIVIL RIGHTS DIVISION, CRIMINAL SECTION **Washington, DC**

Legal Extern September 2022 - December 2022

- Conducted legal research and wrote memoranda for cases enforcing federal criminal statute 18 U.S.C. § 242 involving law enforcement misconduct including sexual assault and excessive force.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA **Washington, DC**

Judicial Intern for the Honorable Magistrate Judge Zia Faruqui June 2022 – August 2022

- Researched and drafted bench memoranda, court orders, and memorandum opinions on a variety of legal issues.
- Participated concurrently in the Hispanic Bar Association's Judicial Council Summer Internship Program.

BRYAN SCHWARTZ LAW **Oakland, CA**

Lead Paralegal September 2020 – August 2021

- Assisted attorneys with special requests and complex projects and managed the paralegal staff.

Civil Rights Employment Paralegal June 2019 – September 2020

- Conducted intake with potential clients and researched potential claims relating to individual, collective, and class action cases.
- Filed complaints, stipulations, and pleadings in both federal district and state county courts, as well as administrative exhaustion related filings for EEOC and DFEH.
- Reviewed and organized discovery, drafted discovery responses, and assisted with deposition preparation.
- Drafted class member declarations in support of motions.

GOLDBERG KOHN LTD **Chicago, IL**

False Claims Act Analyst August 2018 – May 2019

- Researched, analyzed, and investigated False Claims Act matters.
- Reviewed, organized, and logged document production on Relativity and assisted with documents during depositions.

LANGUAGES AND INTERESTS

- **Languages:** Proficient in Spanish (Limited Working Proficiency/Conversational).
- **Interests:** Long-distance runner, foster mom for kittens, amateur cook.

This is not an official transcript. Courses which are in progress may also be included on this transcript.

Record of: Clare D. Perez
GUID: 816507916

Course Level: Juris Doctor

Entering Program:
Georgetown University Law Center
Juris Doctor
Major: Law

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Fall 2021							
LAWJ	001	92	Civil Procedure	4.00	A	16.00	
			David Hyman				
LAWJ	002	92	Contracts	4.00	A+	17.32	
			Girardeau Spann				
LAWJ	005	20	Legal Practice: Writing and Analysis	2.00	IP	0.00	
			Rima Sirota				
LAWJ	008	21	Torts	4.00	A	16.00	
			Paul Rothstein				

	EHrs	QHrs	QPts	GPA
Current	12.00	12.00	49.32	4.11
Cumulative	12.00	12.00	49.32	4.11

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Spring 2022							
LAWJ	003	21	Criminal Justice	4.00	A	16.00	
			Julie O'Sullivan				
LAWJ	004	21	Constitutional Law I: The Federal System	3.00	A	12.00	
			Cliff Sloan				
LAWJ	005	20	Legal Practice: Writing and Analysis	4.00	B+	13.32	
			Rima Sirota				
LAWJ	007	92	Property	4.00	A-	14.68	
			Audrey McFarlane				
LAWJ	790	50	Criminal Law Across Borders	3.00	B+	9.99	
			David Luban				

Dean's List 2021-2022

	EHrs	QHrs	QPts	GPA
Current	18.00	18.00	65.99	3.67
Annual	30.00	30.00	115.31	3.84
Cumulative	30.00	30.00	115.31	3.84

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Fall 2022							
LAWJ	038	07	Antitrust Law	3.00	A-	11.01	
LAWJ	1491	18	Externships I Seminar (J.D. Externship Program)		NG		
			Manpreet Teji				
LAWJ	1491	86	~Seminar	1.00	A	4.00	
			Manpreet Teji				
LAWJ	1491	88	~Fieldwork 3cr	3.00	P	0.00	
			Manpreet Teji				
LAWJ	165	02	Evidence	4.00	A	16.00	
			Michael Pardo				
LAWJ	317	07	Negotiations Sem	3.00	A-	11.01	
			Ariel Eckblad				
LAWJ	361	07	Professional Responsibility	2.00	A	8.00	
			Dolores Dorsainvil				

In Progress:

	EHrs	QHrs	QPts	GPA
Current	16.00	13.00	50.02	3.85
Cumulative	46.00	43.00	165.33	3.84

----------Continued on Next Column----------

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Spring 2023							
LAWJ	025	05	Administrative Law	3.00	A-	11.01	
LAWJ	1492	10	Externship II Seminar (J.D. Externship Program)		NG		
LAWJ	1492	80	~Seminar	1.00	A	4.00	
LAWJ	1492	82	~Fieldwork 3cr	3.00	P	0.00	
LAWJ	1519	09	Immigration Policy across the Branches	3.00	A	12.00	
LAWJ	215	07	Constitutional Law II: Individual Rights and Liberties	4.00	A-	14.68	

Transcript Totals

	EHrs	QHrs	QPts	GPA
Current	14.00	11.00	41.69	3.79
Annual	30.00	24.00	91.71	3.82
Cumulative	60.00	54.00	207.02	3.83

End of Juris Doctor Record

Georgetown Law
600 New Jersey Avenue, NW
Washington, DC 20001

June 06, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

I write to recommend Clare Perez for a judicial clerkship.

Clare was a student in my Legal Practice: Writing and Analysis class during her first year at Georgetown Law. Legal Practice is a year-long research and writing course, organized so that students research and write (and re-write, and re-write again) a number of increasingly complex assignments throughout the year. The Fall semester focuses on objective memoranda, while in the Spring we turn to persuasive advocacy. Throughout the year, I also include a number of smaller units designed to introduce students to other practical lawyering skills such as oral argument and writing for a variety of audiences.

Clare was a strong student from the start. Her clear writing style and deep research were particular assets. Indeed, I used examples of Clare's work in both the fall (the most complex writing assignment of the semester) and the spring (a persuasively crafted statement of the issue) as samples for the rest of the class, demonstrating the skills that I was looking for. Clare's subsequent work on Georgetown's Poverty Law & Policy journal have further bolstered her already-strong research and writing skills, and it is no surprise that she was chosen for a managing editor role.

One of Clare's greatest assets is her work ethic. Clare arrived at Georgetown with a well-honed sense of responsibility and professionalism forged by her experiences as a varsity college athlete and team captain and her post-college work leading a paralegal team in a small and demanding law office. I saw these skills on full display in her year with me. Clare never missed nor was late with a single assignment—professional details that many of my students take some time to master. Along the same lines, Clare earned a perfect score on a midterm exam I gave to test technical competencies such as citation format and research sources—professional details that, again, many students do not quite appreciate, at least at first.

Clare's law school career has continued at full throttle. For example, during her second year, Clare worked 16 hours per week at the Department of Justice, 8 to 10 hours per week at the front desk of the Office of Student Life, and an additional 8 to 10 hours per week babysitting. Notwithstanding all these commitments, Clare also earned top marks in her courses and a Dean's List commendation.

Clare is committed to using her law degree to benefit others. She can see herself both in plaintiff-side law firm settings, as represented by her 2L position at Lieff Cabraser, and in the government, as represented by her two Civil Rights Division externships at the U.S. Department of Justice. Clare's summer position with Judge Zia Faruqui confirmed for her the extraordinary opportunities that working in chambers can afford, and she believes that a further clerkship experience would be the perfect next step in her career. I agree.

I am happy to recommend Clare to you, and I do so with no reservations.

Sincerely,

Rima Sirota
Professor of Legal Research and Writing

Rima Sirota - rs367@law.georgetown.edu - (202) 353-7531

Georgetown Law
600 New Jersey Avenue, NW
Washington, DC 20001

June 06, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

I am pleased to submit this letter in support of Clare Perez's application for a clerkship in your chambers. Clare is very bright, analytically sharp, hard-working, and altruistic. She will be a great clerk.

Clare's first year was conducted entirely by zoom. I taught Clare Georgetown's version of the 1L criminal class, Criminal Justice, which is a 4-credit survey of basic constitutional criminal procedure, covering the Fourth, Fifth, and Sixth Amendments. Among other things, we explore the role of race in policing, discussing, for example, excessive force cases (including the George Floyd case), warrants and their execution (focusing on the Breanna Taylor case), stops and frisks (exploring New York City's program), pretextual stops, and the like. It was difficult to generate much student discussion because of the sensitivity of these topics and the facts that the students had no personal relationship with each other or with me, and the classes were taped.

Clare was not afraid to volunteer, and I am very grateful to her for her consistent willingness to pitch in and help me and her classmates. Her intense interest was obvious, and her participation was marked by ample preparation, consideration, and respect for her classmates. Clare also came to office hours to discuss the material. The exams I received from this class were—despite the zoom environment—some of the best I have ever graded. Clare's easily earned an "A" on a punishing curve. Her exam revealed a comprehensive knowledge of the materials and excellent analytical skills. Clare's performance in my class is no aberration. As of this writing, Clare's GPA of 3.84 puts her in the top 10% of a large and talented class.

I have co-authored, with my colleagues David Luban and David Stewart, a casebook entitled *International and Transnational Criminal Law*. We hired Clare as one of our research assistants as we put together a new edition over the summer of 2022. Unfortunately, Clare was not asked to write for us, so I cannot personally attest to those skills. I asked Clare to substantively cite check three chapters. This required her to ensure that the materials excerpted and the cases and other sources cited were up-to-date and accurate. She was also tasked with generally researching around the subject-matter to ensure that we were aware of emerging developments in the field. Although this was somewhat tedious work, Clare did a good job in giving me what I needed when I needed it.

Clare stands out from the applicant pack in a number of respects.

First, Clare came to law school with a singular goal: to serve and be an advocate for those less privileged. Unlike many other students, she has never wavered from her commitment to use her degree as a tool for social justice. Clare's work as a paralegal at a small civil rights employment firm further defined her interest. Since 1L she has been passionate about civil rights employment law and plaintiff-side work. Clare worked hard to secure a summer associate position with a firm working in the field, Lieff, Cabraser, Heimann & Bernstein, that normally did not recruit at Georgetown. (This position also allows her to fulfill her goal of ultimately practicing in the Bay Area.) Clare's commitment is evident in her externship for the U.S. Department of Justice's Criminal Civil Rights Division. At Georgetown, Clare has taken advantage of opportunities through which she can explore this interest. Thus, she wrote onto the *Georgetown Journal on Poverty Law & Policy*. And she has been accepted to enroll next year in Georgetown's excellent Civil Rights Litigation Clinic. The clinic gives students direct practice experience in trial-level litigation in D.C. district courts and federal appellate courts. Its docket covers a variety of subject-matters, among them employment discrimination.

Second, Clare is the kind of person who sets goals, carefully plans her progress toward them, and then inevitably meets them due to her outsized work ethic and personal discipline. During her 2L year, Clare balanced the demands of her externship, which demanded 16 hours a week, with her course load and journal responsibilities. She also elected to give back by serving as a peer advisor and tutor for 1L students. What her resume does not reveal is that Clare also worked to pay her bills by spending 8-10 hours a week working at the Office of Student Life on campus and an additional 8-10 hours a week babysitting for two different families.

Clare attributes her ability to work not just hard, but also smart, to her experiences as a student athlete and paralegal. As an undergraduate, Clare pursued her studies while spending 35 hours a week as captain of the field hockey team. As a paralegal, Clare worked for a five-person firm, shouldering a very heavy case load and balancing the competing needs of the partners' varied case commitments. She attributes her ability to work well under pressure, manage her time efficiently, and successfully satisfy conflicting obligations to these experiences.

By virtue of her internship Clare is cognizant of the many benefits a clerkship will confer in terms of exposing her to different types of law and practice opportunities, giving her a sense of what constitutes effective advocacy, and showing her how judges work.

Julie O'Sullivan - osullij1@law.georgetown.edu

She is committed to clerking and, if past is prologue, she will bring to chambers singular determination, discipline, and the willingness to work hard. She is also wise enough to recognize that one of the most important things a clerkship offers is the opportunity to build a lasting relationship with one's judge and co-clerks. I hope you will give her this opportunity.

Sincerely yours,

Julie R. O'Sullivan
Agnes Williams Sesquicentennial Professor

Georgetown Law
600 New Jersey Avenue, NW
Washington, DC 20001

June 06, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

I am writing at the request of Clare Perez in support of her application for a judicial clerkship with you. Clare was a student in my Fall 2021 first-year Contracts course and in my Spring 2023 upperclass Constitutional Law II course at Georgetown Law. Based on my impression of her from those courses, I am able to recommend Clare to you very highly for a clerkship position.

Clare not only received a grade of A+ in my first-year Contracts course, but she wrote the best exam in that class of 100 students. Clare received a grade of A- in my upperclass Constitutional Law II course, which placed her in the top third of that class of 113 students. In addition, Clare was well prepared when I called on her in both classes, demonstrating a strong mastery of the material that we were discussing. As the transcript and cumulative GPA indicate for her first three semesters indicate (her Spring 2023 transcript is not yet available), Clare got an A or an A- in virtually all of her other classes as well. However, I pay special attention to Clare's performance on my exams, because they are structured to require students to manipulate doctrinal rules, and respond to anticipated counter arguments, in ways that support the instrumental policy considerations that underlie the legal rules. In that sense, my exams are very litigation oriented. They are designed to test for analytical skills that I believe would be very useful in a judicial clerkship context.

Clare appears to have excelled in everything that she has accomplished, from being the Captain of her Swarthmore Varsity Field Hockey Team to serving as the online Managing Edi-tor of the Georgetown Journal on Poverty Law and Policy. She also appears to have a strong commitment to public interest law, and to using her law degree to advance social justice goals. In that regard, she has now secured a position representing actual clients as part of the Georgetown Civil Rights Clinic during the Spring 2024 semester of her final year in law school. Clare also had experience working as a legal extern for both the Civil Division and the Civil Rights Division of the United States Department of Justice during her second year of law school. And Clare's Summer 2022 work as a judicial intern for Magistrate Judge Zia Faruqui of the United States District Court for the District of Columbia has already given her experience drafting bench memos, orders, and opinions. That experience should enhance her value as a future judicial clerk. Clare hopes that a judicial clerkship will give her a view of the inner workings of the judicial system, and will help her to improve the skills that she will need as the litigator that she hopes to become.

For the reasons that I have discussed, Clare seems like an ideal choice for a judicial clerkship. Accordingly, I am able to recommend her very highly for a clerkship with you. If you would like to discuss Clare's legal abilities in any greater detail, please feel free to call me.

Yours truly,

Girardeau Spann

Girardeau Spann - spann@law.georgetown.edu - 202-662-9103

CLARE PEREZ
1234 Massachusetts Ave NW, Apt 516 Washington, DC 20005 • (773) 726-0732 •
cdp74@georgetown.edu

WRITING SAMPLE

The attached writing sample is an excerpt from a Report and Recommendation I submitted to Magistrate Judge Zia Faruqui of the United States District Court for the District of Columbia during my summer 2022 judicial internship. The excerpt is from the first draft I submitted and was not edited by others. Judge Faruqui gave me permission to use both the report and my first draft as a writing sample.

This Report and Recommendation concerns Plaintiff's application for Supplemental Security Income and Disability Insurance Benefits. Plaintiff alleged that the Administrative Law Judge ("ALJ") committed reversible error at steps three and five in the five-step process used by the Social Security Administration to determine whether a claimant is disabled. State agency disability examiners concluded that Plaintiff was not disabled and that his condition was not severe enough to preclude him from all work in the national economy. The ALJ affirmed these findings and Plaintiff appealed.

II. ANALYSIS

A. Step-Three Evaluation of Bipolar Disorder Under § 12.04

Step three of the five-step evaluation process requires the ALJ to determine whether a claimant's impairment(s) meet or equal a listed impairment. 20 C.F.R. §§ 404.1520(a)(4), 416.920(a)(4). The medical criteria of the listings considered in step three "are more restrictive than the statutory disability standard" because they describe impairments that are "severe enough to prevent a person from doing any gainful activity," not just "substantial gainful activity." *Sullivan v. Zebley*, 493 U.S. 521, 532 (1990) (quoting § 416.925(a)). "For a claimant to show that his impairment matches a listing, it must meet *all* of the specified medical criteria. An impairment that manifests only some of those criteria, no matter how severely, does not qualify." *Zebley*, 493 U.S. at 530.

1. *Determining the Severity of Plaintiff's Mental Impairments*

The ALJ "specifically identifie[d] Listing [12.04], describe[d his] reasons for concluding that Plaintiff's condition d[id] not meet or medically equal that Listing, and [went] on to discuss the evidence in the record in significant detail." *Conway ex rel. Tolen v. Astrue*, 554 F. Supp. 2d 26, 34 (D.D.C. 2008). There was no requirement "that the ALJ provide an exhaustive point-by-point breakdown of each and every listed impairment. Rather, the ALJ [satisfied his obligation] to provide a coherent basis for his step-three determination." *Keene v. Berryhill*, 732 F. App'x 174, 177 (4th Cir. 2018). The ALJ discussed the medical evidence, a disability report, and consultative examiner reports in support of his determination that Plaintiff's conditions did not meet the 12.04 requirements. *See* AR 12-17.

Specifically, Plaintiff did not meet the paragraph B requirements because he did not have an "inability to function independently, appropriately, or effectively, and on a sustained basis,"

nor did he have a "seriously limited ability to function independently, appropriately, or effectively, on a sustained basis." AR 13. In determining the severity of Plaintiff's impairments, the ALJ weighed mental health evaluations from two state psychologists, as well as testimony from a vocational expert ("VE"). *See* AR 12-19.

First, the ALJ assessed Plaintiff's ability to understand, remember, and apply information. *See id.* The medical record indicated that Plaintiff had average intelligence and that his memory was intact. *See* AR 14, 71. There was some indication that Plaintiff's medication caused cognitive impairment (drowsiness), however, the ALJ noted that he was still able to "pay bills and . . . use[d] his phone for social media." *See* AR 14. Thus, the ALJ concluded that the claimant had a "mild limitation" in this domain. *Id*.

Second, the ALJ assessed Plaintiff's ability to interact with others. *See id.* Plaintiff's testimony and the medical records indicated that he regularly attended group therapy and interacted with a housing counselor and a community support worker, however, Plaintiff also isolated himself at home and had trouble communicating. *See id*. However, he was able to take public transportation. *See id*. Thus, the ALJ concluded that Plaintiff had a "moderate limitation." *See id.*

Third, the ALJ assessed Plaintiff's ability to concentrate, persist, or maintain pace. *See id.* The medical records indicated that Plaintiff was cooperative, although he was generally described as depressed. *See id*. Plaintiff testified that attending the group therapy day program was "very necessary" for his mental health. *See* AR 45. He further testified that if he did not attend the program enough, he becomes "[un]productive as a citizen" and "negative thinking start[s] happening." *See* AR 46. Thus, the ALJ concluded that Plaintiff had a "moderate limitation" in this domain. *See id.*

Lastly, the ALJ assessed Plaintiff's ability to adapt or manage oneself. *See id.* The record indicates that Plaintiff was generally independent and able to take care of activities of daily living like "cooking, cleaning, and occasionally shopping for groceries and clothing." *Goodman*, 233 F. Supp. 3d at 112; *see* AR 14. Plaintiff successfully attended and was responsible for attending the day program three days a week and took medication every day. *See* AR 45, 40. A state agency psychological consultant "found only mild restriction in activities of daily living." *Meador v. Colvin*, 2015 WL 1477894, at *4 (W.D. Va. Mar. 27, 2015); *see* AR 87-89. Treatment records from Plaintiff's therapist as well as examination records with a state agency doctor showed that Plaintiff could "sleep, eat, . . . groom, and cooperate." *Id.*; *see*, *e.g.*, AR 41-43. Thus, the ALJ correctly concluded based on substantial evidence "that [Plaintiff] does not have marked difficulties in daily living." *Id.*; *see* AR 14.

Plaintiff obtained outpatient treatment, which bears on determining the severity of his symptoms. *See Schlichting v. Astrue*, 11 F.Supp.3d 190, 207 (N.D.N.Y. 2021) (noting that Plaintiff's failure to seek outpatient mental health treatment was considered in determining severity); *Fisher v. Astrue*, 429 Fed.Appx. 649, 652 (9th Cir. 2011) (considering "no real history of outpatient mental health treatment" in determining severity). Plaintiff's therapist specifically "note[d] that, during [his] mental health treatment sessions, Plaintiff reported marked improvement in all areas of [his] mental health with medication." *Gordon v. Colvin*, 2016 WL 6088263, at *16-17 (D.D.C. 2016). The "marked improvement described in Plaintiff's own reports to [his] psychiatrist . . . corroborated the determination that Plaintiff did not have a severe mental impairment." *Id.* Plaintiff's therapist reported that Plaintiff was "engaged in group activity," "able to demonstrate understanding of healthy lifestyle by sharing how he plans to change his daily habits," and even "provid[ed] support to other group members." AR 289. The lack of "evidence of

any inpatient treatment, psychiatric hospitalizations, or anything in the record similar to an extended episode of decompensation" demonstrated that Plaintiff's problems were insufficiently serious. *Page v. Colvin*, 2016 WL 9456343, at *11 (D.D.C. 2016).

2. *Proving "Marginal Adjustment"*

The ALJ concluded that Plaintiff did not meet Paragraph C requirements because the "evidence of record does not support a finding that claimant can make only marginal adjustment." AR 14. "'[M]arginal adjustment' means that [the claimant's] adaptation to the requirements of daily life [was] fragile." 20 C.F.R. Part. 404, Subpart. P, Appendix. 1, § 12.00(G)(2)(c). The ALJ "will consider that [the claimant] ha[d] achieved only marginal adjustment when the evidence shows that changes or increased demands have led to exacerbation of [his] symptoms and signs and to deterioration in [his] functioning." *Id.*

First, Plaintiff was able "to function outside of [the] home or a more restrictive setting, without substantial psychosocial supports." *Id.* Yet, the listing requires additional findings to show marginal adjustment. *Id.* Further, Plaintiff engaged in a wide range of social activities outside of his home almost daily, such as attending therapy, "us[ing] public transportation, . . . walking to the bus stop, . . . and [] shopping for groceries and clothing, among other things." *Goodman*, 233 F. Supp. 3d at 112. "[Plaintiff's] daily routine . . . belie[s] [his] claim that [his] symptoms are so disabling that [he] is unable to work." *Goodman*, 233 F. Supp. 3d at 112.

Second, Plaintiff never experienced any "episodes of deterioration that [] required [him] to be hospitalized." AR 300. Hospitalization is evidence of marginal adjustment. 20 C.F.R. Part 404, Subpart P, Appendix 1, § 12.00(G)(2)(c). Rather, Plaintiff received relatively conservative psychological outpatient treatment. *See* AR 321-73. On April 27, 2018, Plaintiff's therapist reported that Plaintiff was well groomed, cooperative, goal-directed, and was "oriented to time,

place, and person." AR 367. The listing also points to "repeated episodes of decompensation" as evidence of marginal adjustment. *Meador*, 2015 WL 1477894, at *5. Yet, a state agency doctor concluded that Plaintiff was "stable with relatively intact mental state examinations." AR 89. While Plaintiff countered that he does not handle stress and change well, the record again belies such a conclusion. *See Goodman*, 233 F. Supp. 3d at 112.

Thus, there was substantial evidence that the ALJ did not err in concluding that Plaintiff did not meet or medically equal the listing criteria for bipolar disorder.

B. The ALJ's RFC Determination

Plaintiff's impairment did not meet or equal a listed impairment, thus, the ALJ must determine the Plaintiff's "residual functional capacity" (RFC). 20 C.F.R. § 404.1520(e). The RFC is determined before step four and used in steps four and five to determine if a claimant can perform any of their past work or other existing work. *Id.* §§ 404.1545(a)(5)(i)-(ii).

The ALJ must assess the RFC on the record, which includes "all of the relevant medical and other evidence." § 404.1545(a)(3). First, the ALJ must "consider any statements about what [the claimant] can still do that have been provided by medical sources, whether or not they are based on formal medical examinations." *Id.* Then, the ALJ must "also consider descriptions and observations of [the claimant's] limitations from [his] impairment(s), including limitations that result from [his] symptoms . . . provided by [the claimant], [his] family, neighbors, friends, or other persons." *Id.*

The ALJ's RFC determination "must contain a narrative discussion identifying the evidence that supports each conclusion." *Butler*, 353 F.3d at 1000. The determination must also "build an accurate and logical bridge from the evidence to [the] conclusion so that . . . a reviewing court . . . may assess the validity of the agency's ultimate findings and afford a claimant meaningful

judicial review." *Lane-Rauth v. Barnhart*, 437 F. Supp. 2d 63, 67 (D.D.C. 2006) (cleaned up). But "there is no rigid requirement that the ALJ specifically refer to every piece of evidence in his decision." *Dyer v. Barnhart*, 395 F.3d 1206, 1211 (11th Cir. 2005). Failure to assess a specific piece of evidence constitutes error only if the ALJ failed to "develop the record fully and fairly." *Charles v. Astrue*, 854 F. Supp 2d 22, 30 (D.D.C. 2012). In developing the record, the ALJ must explain "what evidence was credited, [and] also whether other evidence was rejected rather than simply ignored." *Butler*, 353 F.3d at 1002.

1. *Determination as to Plaintiff's Physical Limitations*

The ALJ found that Plaintiff had physical limitations including "abdominal discomfort," "emphysema," "shortness of breath," and "acute systolic heart failure." AR 16. The ALJ refused to impose additional physical limitations in Plaintiff's RFC for three reasons. *First*, Plaintiff was "asymptomatic and had no abdominal pain, nausea, vomiting, blood in the stool, or changed bowel habits," and had "normal gait and station." *Id*. *Second*, Plaintiff "had normal musculoskeletal examination, pulmonary examination, and cardiovascular examination." *Id*. *Third*, Plaintiff's examinations and reports note that Plaintiff's acute systolic heart failure "improved with treatment." *Id. Lastly*, Plaintiff passed a six-minute walk test and medical evidence of record indicates that the claimant regularly walks several blocks and has no evidence of muscle weakening. AR 17-19.

The ALJ properly considered and explained the weight he gave to the medical evidence in the record. *See* AR 15-17. State medical doctors opined that Plaintiff had environmental limitations and some exertional limitations and thus could perform "less than medium work with additional environmental limitations." AR 17, 19. The ALJ found these opinions "persuasive" and "consistent with the mostly normal physical examinations." AR 18. The ALJ found that Plaintiff's

impairments could reasonably be expected to cause Plaintiff's alleged symptoms, however, the ALJ found that Plaintiff's statements concerning the intensity, persistence, and limiting effects of these symptoms were not "entirely consistent with the medical evidence and other evidence in the record." AR 16. Plaintiff's representative did not argue for disability based on these physical impairments, instead their arguments pertain to Plaintiff's mental impairments. *See* AR 12-13.

2. *Determination as to Plaintiff's Mental Limitations*

The ALJ found that Plaintiff did have a mental limitation due to his bipolar I disorder and major depression with severe psychotic features. *See* AR 100-103. The ALJ declined to find additional mental limitations in Plaintiff's RFC for three reasons, which he then used to determine jobs that Plaintiff could perform in step five.

First, Plaintiff was receiving consistent mental health treatment and was "compliant with his medication regimen and open to treatment suggestions." AR 21. *Second*, "mental status examinations consistently indicate an appropriate physical appearance, within normal limits motor activity, within normal limits speech, cooperative behavior, depressed mood, appropriate affect, logical thought process, appropriate content, no delusions, no homicidal ideations, no hallucinations, average intelligence, fair insight, within normal limits judgments, within normal limits attention, and intact memory." AR 17. *Third*, "there is no material difference between the claimant's work activity in the years *before* versus *after* the alleged disability onset date" because plaintiff did not work in the 15 years prior and thus there is no relevant past work experience to compare to. *Id*. Even if the agency doctors' opinions were contradictory to Plaintiff's treating physician's opinion, "the opinion of a treating physician is controlling . . . only if it is 'not inconsistent with other substantial record evidence and [it is] well-supported by medically

acceptable clinical and laboratory diagnostic techniques.'" *Grant*, 857 F. Supp. 2d at 153 (quoting *Butler*, 353 F.3d at 1003.).

No "specific evidentiary weight, including controlling weight, [was given] to any prior administrative medical findings or medical opinions, including those from medical sources." AR 17. The ALJ stated that he "fully considered" the medical opinions and prior administrative medical findings from Plaintiff's therapist and state agency physicians and psychologists. *See id.* The ALJ accorded significant weight to the findings and conclusions of the state agency psychiatric consultants, who opined that Plaintiff was able to "perform less than medium work with additional environmental limitations." *Id*. The ALJ "was also justified in placing little weight" on the conclusions of Plaintiff's therapist because the opinion was not supported by "conflicting evidence in the record." *Turner*, 710 F. Supp. 2d at 107; *see* AR 22–23. The ALJ's evaluation of Plaintiff's physical and mental limitations in assessing her RFC was not missing "crucial particulars" or even "spare;" instead, the ALJ indicated "not only of what evidence was credited, but also whether other evidence was rejected." *Butler*, 353 F.3d at 1002.

Plaintiff contends that the ALJ failed to account for all Plaintiff's mental limitations in the RFC determination and thus the decision is not supported by substantial evidence. *See* Pl.'s Mot. at 9-13. Plaintiff argues that the ALJ accepted and found persuasive every limitation put forward by the psychologists' and VE because the ALJ did not explicitly state that it was omitting or discounting any opinion. *See id*. However, Plaintiff does not cite support for this contention. *See id.* Furthermore, as was previously stated, the ALJ need not refer to every piece of evidence in his decision, and failure to assess a specific piece of evidence constitutes error only if the ALJ failed to "develop the record fully and fairly," which is not the case here. *Charles v. Astrue*, 854 F. Supp. 2d 22, 30 (D.D.C. 2012); *see also Dyer v. Barnhart*, 395 F.3d 1206, 1211 (11th Cir. 2005).

Specifically, Plaintiff argues that the ALJ failed to account for one psychologist's opinion that Plaintiff could carry out simple goals and plans as directed by supervisors because "simple tasks" is meaningfully different from "simple goals and plans as directed by supervisors." Pl.'s Mot. at 11. Further, Plaintiff contends that the ALJ failed to account for Plaintiff's need for only superficial interaction because the determination only mentions occasional interaction, which they argue is significantly different because occasional refers to the amount of time of the interactions whereas superficial describes the type of interaction. *See* Pl.'s Mot. at 11-12. However, Plaintiff never explains why this distinction would lead to a different result and the ALJ also expressly incorporated the VE's testimony into his decision as an alternative basis, in addition to the state psychologists' findings, for finding Plaintiff not disabled. *See* AR 18-19. Thus, the difference between "simple tasks" and "simple goals and plans as directed by supervisors" is harmless here because the machine feeder job relied upon by the ALJ is available in either scenario. *See* Def.'s Mot. at 25 (citing *Mickles v. Shalala*, 29 F.3d 918, 921 (4th Cir. 1994) (stating that it is well settled that courts should affirm the Commissioner's decision, even where there is error, if there is "no question that he would have reached the same result notwithstanding his initial error."); *Davis v. Berryhill*, 272 F. Supp. 3d 154, 180 (D.D.C. 2017) ("An error is harmless when it is clear from the record that the ALJ's error was inconsequential to the ultimate non-disability determination.")).

Furthermore, the distinction between "superficial interaction" and "occasional interaction" is irrelevant given that the VE testified that neither precluded work. *See* AR 49-50, 53, 95-96, 111-12; *See* Def.'s Mot. at 24 (citing *Goforth v. Colvin*, No. 13-CV-274-TLW, 2014 WL 1364992, at *6 (N.D. Okla. Ap. 6, 2014)) (finding ALJ's failure to include "superficial interaction" limitation harmless because the jobs relied upon by the ALJ only required a level 8 interaction). Thus, both opinions lead to a finding that Plaintiff is not disabled, and as the VE agreed, even if Plaintiff was

as functionally limited as he alleges, the outcome of the case would not have been different. *See* AR. 19; Def.'s Mot. at 3 (citing *Washington v. Saul,* No. 20-CV-662 (APM), 2021 WL 2514691, at *5 (D.D.C. June 18, 2021)) ("[I]t [was] unnecessary for the court to decide whether the ALJ's determination…constituted legal error, because any such error was harmless").

In sum, the ALJ based the RFC determination on the totality of the record as required by 20 C.F.R. § 404.1545(a)(3), for the ALJ supports the RFC determination with analysis of the evidence of record throughout. *See* AR 12-19. The ALJ considered evidence of both physical and mental limitations of the Plaintiff in the RFC determination, relying primarily on medical records and the findings of three agency doctors. *See* AR 17-18. The ALJ properly considered and explained the weight he gave to the medical evidence in the record, and adopted the exact same functional limitations as found by the state agency physicians. *See* Def.'s Mot. at 2 (compare AR 14-18 with AR 81-112). The ALJ's "assessment of credibility is entitled to great weight and deference, since he had the opportunity to observe the witness's demeanor." *Thomas v. Astrue,* 677 F.Supp.2d 300, 308 (D.D.C.2010) (quoting *Infantado v. Astrue,* 263 Fed. Appx. 469, 475 (6th Cir.2008)); *see also Brown v. Bowen,* 794 F.2d 703, 706 (D.C.Cir.1986) ("While contradictory evidence may exist, such credibility determinations are for the factfinder who hears the testimony...."). The Court will defer to the ALJ's credibility determination because it is adequately explained in his decision and substantially supported by the record where he explained and built a "logical bridge" regarding how he considered each piece of evidence in the record. *See* AR 12-19; *See Banks v. Astrue*, 537 F. Supp. 2d 75, 84 (D.D.C. 2008) (holding that when determining the RFC, the ALJ "must build a 'logical bridge' from the evidence to his conclusion and the ALJ must explain how he considered and resolved any 'material inconsistencies or ambiguities' evident in the record[.]").

B. Step-Five Determination of Other Jobs That Plaintiff Could Perform

An ALJ may "base[] [his] conclusion [that jobs exist in significant numbers in the national economy] almost entirely on the testimony of the vocational expert." *Brown v. Barnhart*, 408 F. Supp. 2d 28, 33 (D.D.C. 2006). The ALJ is not required "to submit to the vocational expert every impairment *alleged* by a claimant;" instead "the ALJ must accurately convey to the vocational expert all of a claimant's credibly established limitations." *Rutherford v. Barnhart*, 399 F.3d 546, 554 (3d Cir. 2005). The VE testified that Plaintiff has the residual capacity to perform the "full range of medium work" and "would be able to perform the requirements of representative occupations at the medium, specific vocational preparation (SVP) 2 level." AR 19. The ALJ found the VE's testimony to be consistent with the information contained in the Dictionary of Occupational Titles. *See* SSR–00–4p (requiring the ALJ to determine whether a VE's testimony is consistent with the Directory of Occupational Titles). *See* SSR–00–4p, AR 19.

Often, a challenge to an ALJ's reliance on VE testimony at step five boils down to a challenge to the RFC assessment itself. *See id.* at n.8. Thus, Plaintiff's challenges focus on the ALJ's assessment of (1) the treating physician's determinations and (2) Plaintiff's testimony.

1. *Weighing Treating Physician's Opinion*

Plaintiff alleges that the agency doctors' opinions were contradictory to Plaintiff's treating physician's opinion. "[T]he opinion of a treating physician is controlling . . . only if it is not inconsistent with other substantial record evidence and [it is] well-supported by medically acceptable clinical and laboratory diagnostic techniques." *Grant*, 857 F. Supp. 2d at 153 (internal quotations omitted). According to one state agency psychologist, Plaintiff's therapist's assessment was not found to be a "medical opinion from an acceptable medical source." AR 84. The evaluating state doctors and psychologists determined that his opinion was not to be considered "persuasive

as he is not an acceptable medical source." AR 90. The ALJ "explain[ed] his reasons" for "reject[ing] the opinion of a treating physician" by citing substantial contradictory evidence, including medical examinations and reports. *Williams v. Shalala*, 997 F.2d 1494, 1498 (D.D.C. 2004); *see* AR 19–20. An ALJ may properly reject an examining physician's opinion on this basis, as long as the ALJ states with particularity the weight given to the different medical opinions. *See generally Tonapetyan v. Halter*, 242 F.3d 1144, 1149 (9th Cir. 2001) (noting that an ALJ may reject an examining physician's opinion "for lack of objective support"); *Morgan v. Comm'r of the SSA*, 169 F.3d 595, 603 (9th Cir. 1999) (an ALJ may reject an examining physician's opinion as unreasonable given "other evidence in the record"); *Batson v. Comm'r of the SSA*, 359 F.3d 1190, 1195 (9th Cir. 2004) (noting an ALJ may reject any medical opinion that is unsupported by the record as a whole or objective medical findings).

Specifically, the ALJ stated that Plaintiff's therapist's opinion was "not supported by evidence that the claimant consistently [was] found to have normal intelligence and [was] inconsistent with the function report that indicates that the claimant goes shopping in stores, handles his own money, and takes public transportation." AR 17. The ALJ further noted that the record "does not support absentee limitations as the claimant [had] good attendance at his weekly meetings." *Id*. The ALJ found the medical consultants' opinions persuasive and consistent with Plaintiff's testimony that he "lives alone and [was] independent with activities of daily living; attends rehabilitation program regularly; and takes public transportation." AR 18.

2. *Weighing Plaintiff's Testimony*

Next, Plaintiff claims that the ALJ did not properly consider Plaintiff's testimony. A claimant's "[s]tatements about . . . symptoms will not alone establish that [he was] disabled. There must be objective medical evidence from an acceptable medical source that shows [he] ha[d] a

medical impairment(s) which could reasonably be expected to produce the . . . symptoms alleged." 20 C.F.R. § 416.929. Whenever the claimant's statements about the intensity, persistence, or functionally limiting effects of pain or other symptoms are not substantiated by objective medical evidence, the ALJ must make a credibility finding of the claimant's statements "based on a consideration of the entire case record." SSR 96–7P, 1996 WL 374186, at *2. The ALJ's decision "must contain specific reasons for the finding on credibility, supported by the evidence in the case record, and must be sufficiently specific to make clear to the individual and to any subsequent reviewers the weight the adjudicator gave to the individual's statements and reasons for that weight." *Id.* at *2; *Butler*, 353 F.3d at 1005. Plaintiff's testimony that he would miss work more than three times per month was not supported by the record, as it showed that Plaintiff had "good attendance at his weekly meetings." AR 17. "Although [claimant's] interpretation of the evidence is not unreasonable, neither is the ALJ's." *Fischer v. Astrue*, 429 Fed. Appx. 649, 652 (9th Cir. 2011. "Where evidence is susceptible to more than one rational interpretation, it is the ALJ's conclusion that must be upheld." *Burch v. Barnhart*, 400 F.3d 676, 679 (9th Cir. 2005). Thus, the ALJ did not err in excluding this limitation from his step-five analysis.

Applicant Details

First Name	**Clifford**
Last Name	**Perez**
Citizenship Status	**U. S. Citizen**
Email Address	**cperez24@nd.edu**
Address	**Address** Street **7519 Bradley Boulevard** City **Bethesda** State/Territory **Maryland** Zip **20817** Country **United States**
Contact Phone Number	**8458532529**

Applicant Education

BA/BS From	**The Catholic University of America**
Date of BA/BS	**May 2014**
JD/LLB From	**Notre Dame Law School** **http://law.nd.edu**
Date of JD/LLB	**May 18, 2024**
Class Rank	**School does not rank**
Law Review/Journal	**Yes**
Journal(s)	**Notre Dame Journal of Law, Ethics, and Public Policy**
Moot Court Experience	**No**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**Yes**

Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Kelly, James
J.Kelly@nd.edu
5746317637
Kirsch, Michael
mkirsch@nd.edu
574-631-5582

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Clifford J. Perez
7519 Bradley Boulevard
Bethesda, MD 20817
cperez24@nd.edu

June 19, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez,

I am a rising third-year student at Notre Dame Law School. I am writing to apply for a clerkship in your chambers beginning in 2024.

Enclosed please find my resume, law school transcript, and writing sample. You will receive letters of recommendation from Professors James Kelly and Michael Kirsch of Notre Dame Law School.

If I can provide additional information that would be helpful to you, please let me know. Thank you for your consideration.

Respectfully,
Clifford Perez

Clifford J. Perez

7519 Bradley Boulevard | Bethesda, MD 20817 | cperez24@nd.edu | (845) 853-2529

EDUCATION

University of Notre Dame Law School — Notre Dame, IN
Juris Doctor Candidate — May 2024
GPA: 3.53

- Honor Roll: Fall 2022; Spring 2023
- Notre Dame Journal of Law, Ethics, and Public Policy – Managing Senior Editor
- Community Development Clinic, Spring 2023
- Space Law Society – President
- Galilee Public Interest Immersion Program
- First Generation Professionals

The Catholic University of America — Washington, DC
Bachelor of Science in Business Administration in Economics, cum laude — May 2014
GPA: 3.67

- The Henry Spiegel Award for Outstanding Academic Achievement in Economics
- Dean's List: 2010–2014
- Pi Gamma Mu: International Honors Society in Social Sciences
- Phi Eta Sigma: National Honor Society
- Catholic University Men's Rugby Team – President

EXPERIENCE

Carlton Fields — Washington, DC
Summer Associate — May 2023 – Present

- Draft legal memorandums for client matters on topics such as: the use of predecessor audit reports in current financial statements; broker-dealer's financial duties in California; and the statutes of limitations for various securities claims
- Review and analyze complaints and answers from ongoing cases
- Assist attorneys in litigation and transactional matters

Montgomery County Circuit Court, 6th Judicial Circuit — Rockville, MD
Judicial Intern for the Honorable Judge Michael J. McAuliffe — May 2022 – July 2022

- Provided legal research for criminal, civil and procedural matters, including the admissibility of hearsay evidence in probation hearings, patient privilege for prison psychologists and compensation of trust auditors
- Assisted in jury selection, hearings, and other trial preparation activities
- Created hearing preparation reports which summarize case history, the parties' positions, cited laws and other applicable laws

The Concourse Group LLC — Annapolis, MD
Senior Analyst — April 2016 – August 2021

- Created a comprehensive housing asset report for the House Arms Subcommittee
- Managed all technical responses to facilitate the federal government's needs on military housing and to ensure proper management of federal government assets

Economic Analyst & Field Program Manager

- Conducted quantitative research, economic modeling and technical reporting to develop master plans, inventory assessments and economic analyses for US Army housing
- Managed and led onsite assessments of US military housing to verify existing housing information
- Developed technical responses for government contract proposals

INTERESTS/AWARDS: Rugby; Camping; Guitar; Eagle Scout

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UNIVERSITY OF NOTRE DAME NOTRE DAME, INDIANA 46556

Perez, Clifford J.
Student ID: XXXXX0884

Date Issued: 02-JUN-2023
Page: 1

Birth Date: 11-21-XXXX

Issued To: Clifford Perez
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cperez24@nd.edu

Course Level: Law
Program: Juris Doctor
College: Law School
Major: Law

CRSE	ID	COURSE TITLE	CRS HRS	GRD	QPTS	UND SEMESTER TOTALS ATTEMP HRS	UND SEMESTER TOTALS EARNED HRS	UND SEMESTER TOTALS GPA HRS	UND SEMESTER TOTALS GPA	OVERALL TOTALS ATTEMP HRS	OVERALL TOTALS EARNED HRS	OVERALL TOTALS GPA HRS	OVERALL TOTALS GPA
UNIVERSITY OF NOTRE DAME CREDIT:													
Fall Semester 2021													
Law School													
LAW	60105	Contracts	4.000	B+	13.332								
LAW	60302	Criminal Law	4.000	B+	13.332								
LAW	60703	Legal Research	1.000	B	3.000								
LAW	60705	Legal Writing I	2.000	B+	6.666								
LAW	60901	Torts	4.000	B-	10.668								
			Total		46.998	15.000	15.000	15.000	3.133	15.000	15.000	15.000	3.133
Spring Semester 2022													
Law School													
LAW	60307	Constitutional Law	4.000	B+	13.332								
LAW	60308	Civil Procedure	4.000	B+	13.332								
LAW	60707	Legal Resrch & Writing II-MC	1.000	B+	3.333								
LAW	60906	Property	4.000	B+	13.332								
LAW	70318	Legislation & Regulation	3.000	B+	9.999								
LAW	75700	Galilee	1.000	S	0.000								
			Total		53.328	17.000	17.000	16.000	3.333	32.000	32.000	31.000	3.236
Fall Semester 2022													
Law School													
LAW	70101	Business Associations	4.000	A	16.000								
LAW	70605	Federal Income Taxation	3.000	A	12.000								
LAW	70903	Military Law	2.000	A-	7.334								

CONTINUED ON PAGE 2

UNIVERSITY OF NOTRE DAME NOTRE DAME, INDIANA 46556

Perez, Clifford J.
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Page: 2

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CRSE	ID	COURSE TITLE	CRS HRS	GRD	QPTS	UND SEMESTER TOTALS ATTEMP HRS	UND SEMESTER TOTALS EARNED HRS	UND SEMESTER TOTALS GPA HRS	UND SEMESTER TOTALS GPA	OVERALL TOTALS ATTEMP HRS	OVERALL TOTALS EARNED HRS	OVERALL TOTALS GPA HRS	OVERALL TOTALS GPA
University of Notre Dame Information continued:													
LAW	73136	Cybersecurity & Data Protect.	2.000	A	8.000								
LAW	75710	Intensive Trial Ad	4.000	S	0.000								
LAW	75751	Journal Law/Ethics/Public Pol	1.000	S	0.000								
			Total		43.334	16.000	16.000	11.000	3.939	48.000	48.000	42.000	3.420
Honor Roll													
Spring Semester 2023													
Law School													
LAW	70107	Securities Regulation	3.000	A-	11.001								
LAW	70111	Real Estate Transactions	3.000	A-	11.001								
LAW	70807	Professional Responsibility	3.000	A-	11.001								
LAW	75721	Community Development Clinic I	5.000	A	20.000								
LAW	75751	Journal Law/Ethics/Public Pol	1.000	S	0.000								
LAW	76101	Directed Readings	2.000	A	8.000								
			Total		61.003	17.000	17.000	16.000	3.813	65.000	65.000	58.000	3.529
Honor Roll													
Fall Semester 2023													
IN PROGRESS WORK													
LAW	74411	LE Law of International Finance	3.000	IN PROGRESS									
LAW	74412	LE Crypto, Blockchain & Finance	2.000	IN PROGRESS									
LAW	74425	LE Business and Human Rights	2.000	IN PROGRESS									
LAW	74433	LE Law of International Trade	3.000	IN PROGRESS									
LAW	74741	LE Journal Law Ethics Pub Policy	1.000	IN PROGRESS									
LAW	74821	LE Jurisprudence	3.000	IN PROGRESS									
In Progress Credits 14.000													

********** TRANSCRIPT TOTALS **********

NOTRE DAME	Ehrs:	65.000	QPts:	204.663
	GPA-Hrs:	58.000	GPA:	3.529
TRANSFER	Ehrs:	0.000	QPts:	0.000
	GPA-Hrs:	0.000	GPA:	0.000
OVERALL	Ehrs:	65.000	QPts:	204.663
	GPA-Hrs:	58.000	GPA:	3.529

********** END OF TRANSCRIPT **********

CAMPUS CODES

All courses taught at an off campus location will have a campus code listed before the course title.
The most frequently used codes are:

AF Angers, France
DC Washington, DC
FA Fremantle, Australia
IA Innsbruck, Austria
IR Dublin, Ireland
LA London, England (Fall/Spring)
LE London, England (Law-JD)
LG London, England (Summer EG)
LS London, England (Summer AL)
PA Perth, Australia
PM Puebla, Mexico
RE Rome, Italy
RI Rome, Italy (Architecture)
SC Santiago, Chile
SP Toledo, Spain

For a complete list of codes, please see the following website:
http://registrar.nd.edu/pdf/campuscodes.pdf

GRADING SYSTEM - SEMESTER CALENDAR

Previous grading systems as well as complete explanations are available at the following website:
http://registrar.nd.edu/students/gradefinal.php

August 1988 - Present

Letter Grade	Point Value	Legend
A	4	
A-	3.667	
B+	3.333	
B	3	
B-	2.667	
C+	2.333	
C	2	Lowest passing grade for graduate students.
C-	1.667	
D	1	Lowest passing grade for undergraduate students.
F	0	Failure
F*	0	No final grade reported for an individual student (Registrar assigned).
X	0	Given with the approval of the student's dean in extenuating circumstances beyond the control of the student. It reverts to "F" if not changed within 30 days after the beginning of the next semester in which the student is enrolled.
I	0	Incomplete (reserved for advanced students in advanced studies courses only). It is a temporary and unacceptable grade indicating a failure to complete work in a course. The course work must be completed and the "I" changed according to the appropriate Academic Code.
U		Unsatisfactory work (courses without semester credit hours, as well as research courses, departmental seminars or colloquia or directed studies; workshops; field education and skill courses).

Grades which are not Included in the Computation of the Average

S Satisfactory work (courses without semester credit hours, as well as research courses, departmental seminars or colloquia or directed studies; workshops; field education and skill courses).
V Auditor (Graduate students only).
W Discontinued with permission. To secure a "W" the student must have the authorization of the dean.
P Pass in a course taken on a pass-fail basis.
NR Not reported. Final grade(s) not reported by the instructor due to extenuating circumstances.
NC No credit in a course taken on a pass-no credit basis.

For current and historical grade point averages by class, as well as additional information regarding prior grading policies and current distribution ranges, see: http://registrar.nd.edu/students/gradefinal.php

THE LAW SCHOOL GRADING SYSTEM

The current grading system for the law school is as follows: A (4.000), A- (3.667), B+ (3.333), B (3.000), B- (2.667), C+ (2.333), C (2.000), C- (1.667), D (1.000), F or U (0.000).

Effective academic year 2011-2012, the law school implemented a grade normalization policy, with mandatory mean ranges (for any course with 10 or more students) and mandatory distribution ranges (for any course with 25 or more students). For Legal Writing (I & II) only, the mean requirement will apply but the distribution requirement will not apply. The mean ranges are as follows: for all first-year courses (except for the first-year elective, which is treated as an upper-level course), the mean is 3.25 to 3.30; for large upper-level courses (25 or more students), the mean is 3.25 to 3.35; for small upper-level courses (10-24 students), the mean is 3.15 to 3.45.

For current and historical grade point averages by class, as well as additional information regarding prior grading policies and current distribution ranges, see: http://registrar.nd.edu/students/gradefinal.php

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CHUCK HURLEY, UNIVERSITY REGISTRAR

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COURSE NUMBERING SYSTEM

Previous course numbering systems (prior to Summer 2005) are available at the following website:
http://registrar.nd.edu/faculty/course_numbering.php

Beginning in Summer 2005, all courses offered are five numeric digits long (e.g. ENGL 43715).
The first digit of the course number indicates the level of the course.

ENGL 0 X - XXX = Pre-College course
ENGL 1 X - XXX = Freshman Level course
ENGL 2 X - XXX = Sophomore Level course
ENGL 3 X - XXX = Junior Level course
ENGL 4 X - XXX = Senior Level course
ENGL 5 X - XXX = 5th Year Senior / Advanced Undergraduate Course
ENGL 6 X - XXX = 1st Year Graduate Level Course
ENGL 7 X - XXX = 2nd Year Graduate Level Course (MBA / LAW)
ENGL 8 X - XXX = 3rd Year Graduate Level Course (MBA / LAW)
ENGL 9 X - XXX = Upper Level Graduate Level Course

Clifford Perez – Writing Sample II

This is an excerpt from a twenty-page appellate brief. The brief addressed a Defendant's request for suppression of physical evidence in violation of his Fourth Amendment rights. The evidence was obtained during a warrantless search based on the consent of a third party who resided in the same apartment as the Defendant.

ARGUMENT

The district court erred in denying the Motion to Suppress Physical evidence because Mr. Preston's Fourth Amendment rights were violated by the warrantless search of his ensuite bathroom and his closed bag since Ms. Kaplan did not have the actual or apparent authority to consent to their search.

The Fourth Amendment safeguards the "right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. Usually searches are unreasonable unless conducted with a warrant issued on probable cause. *Skinner v. Ry. Labor Execs. Ass'n*, 489 U.S. 602, 619 (1989). One of the few exceptions is when consent is obtained from a party with actual or apparent authority over the property. *United States v. Aghedo*, 159 F.3d 308, 310 (7th Cir. 1998); *see United States v. Matlock*, 415 U.S. 164, 171 (1974). The government must show that evidence obtained in a warrantless search based on an exception applies by a preponderance of the evidence. *Basinski*, 226 F.3d at 833. If the government fails to do so, the evidence must be suppressed. *Id.* at 834.

Actual authority depends on "having joint access or control of the property for most purposes." *Matlock*, 415 U.S. at 171 n.7. Apparent authority exists when "a man of reasonable caution" believes a consenting party had actual authority over the property. *Illinois v. Rodriguez*, 497 U.S. 177, 188 (1990) (citing *Terry v. Ohio*, 392 U.S. 1, 21-22 (1968)). While officers are not expected to be infallible, their "mistakes must be those of reasonable men, acting on facts

leading sensibly to their conclusions of probability." *United States v. Rosario*, 962 F.2d 733, 738 (7th Cir. 1992) (citing *Brinegar v. United States*, 338 U.S. 160, 176 (1949)). Even when actual authority is stated explicitly, the surrounding circumstances could lead a reasonable person to doubt its truth. *Illinois v. Rodriguez*, 497 U.S. at 188. "[I]t is not reasonable for the police to proceed on the theory that 'ignorance is bliss.'" *Terry*, 915 F.3d at 1145 (quoting LaFave, *Search and Seizure*, § 8.3(g) (5th ed. 2018)).

The agent's warrantless search violated Mr. Preston's Fourth Amendment rights in two ways. First, Ms. Kaplan did not have actual or apparent authority to consent to the search of Mr. Preston's ensuite bathroom because she had access to his ensuite bathroom for one expressed purpose—to bathe. Since Ms. Kaplan explained this to the agent, a reasonable officer in the agent's shoes would not believe she had use of the bathroom for most purposes. Second, even if she could consent to the search of the bathroom, her consent did not extend to Mr. Preston's bag because she did not use the bag for any purpose, and a reasonable officer observing the external markings of the bag would not believe she did.

I. MS. KAPLAN DID NOT HAVE ACTUAL OR APPARENT AUTHORITY TO CONSENT TO THE SEARCH BECAUSE SHE DID NOT HAVE USE OF THE ENSUITE BATHROOM FOR MOST PURPOSES AND A REASONABLE OFFICER WOULD NOT BELIEVE THAT SHE HAD USE OF IT FOR MOST PURPOSES

Co-habitants in an apartment might "reasonably expect to maintain exclusive access to their respective bedrooms, without explicitly making this expectation clear to one another." *United States v. Duran*, 957 F.2d 499, 505 (7th Cir. 1992) (citing LaFave, *Search and Seizure*, § 8.5(c), at 300). Further, access to a room can be granted for a limited purpose, which does not translate to general access. *See Chapman v. United States,* 365 U.S. 610, 779-80 (1961).

Joint access or control of the property for most purposes is determined by use of the property as if it was one's own. *See United States v. Groves*, 530 F.3d 506, 510 (7th Cir. 2008).

In *Groves*, officers received consent to search the Defendant's apartment from his girlfriend. *Id*. at 508. She registered her daughter for school at his address. *Id*. at 510. The telephone was in her name. *Id*. She kept personal items, clothes, mail, bills, and some marijuana. *Id*. She had a key and unlimited access to the apartment, which she regularly cleaned. *Id*. Since she used the apartment as if it was her own, the court found that she had actual authority over the apartment. *Id*. In contrast, actual authority can be limited by restricted access to an area, even in one's own home. *United States v. Richards*, 741 F.3d 843, 850 (7th Cir. 2014). In *Richards*, officers received consent to search a house from the homeowner. *Id*. at 847. The search included the Defendant's room. *Id*. He was the only one who stayed in the bedroom. *Id*. at 850. The Defendant secured his bedroom with a lock and key. *Id*. The homeowner could not access the bedroom without the Defendant's permission. *Id*. Due to the homeowner's limited access, the court found that he did not have actual authority over the bedroom. *Id*.; *see also Duran*, 957 F.2d at 505 ("Two friends inhabiting a two-bedroom apartment might reasonably expect to maintain exclusive access to their respective bedrooms, without explicitly making this expectation clear to one another").

Further, specific authority to enter a premise does not translate to general authority to consent to the search of said property. *See Chapman*, 365 U.S. at 779-80. In *Chapman*, a landlord consented to a search by officers of a tenant's house while the tenant was away. *Id*. at 610. The landlord was allowed to enter the tenant's apartment to "view waste" without the tenant. *Id*. at 616. The court found that the landlord's specific authority to "view waste" did not extend to a general authority to consent to search the house. *Id*.; *see also Stoner v. California*, 376 U.S. 483, 487-90 (1964) (finding a night clerk who could access a Defendant's room with a key did not have authority to consent to its search). In contrast to the girlfriend in *Groves* had

unlimited access to her boyfriend's apartment. 530 F.3d at 510.

Apparent authority can be established by an individual when she acts in a manner that would reasonably indicate that she has actual authority over an area. *Rosario*, 962 F.2d at 737. In *Rosario*, a hotel-guest answered police officers' knocks. *Id*. at 734. The guest made no indications that other people were in the apartment. *Id*. He let the officers into the room without hesitation and without permission. *Id*. The Defendant was the actual renter of the room. *Id*. The Defendant did not voice any objections. *Id*. The court found the guest's unfettered access to the door was reasonable for the officers to infer apparent authority. *Id*.; *see also Illinois v. Rodriguez*, 497 U.S. at 180 (finding sufficient indicators of apparent authority from a paramour who referred to an apartment as "ours" and indicated she had clothes and furniture there). Further, one's representation can discredit one's apparent authority. *See United States v. Chaidez*, 919 F.2d 1193, 1201 (7th Cir. 1990). In *Chaidez*, a daughter consented to the search of her father's house. *Id*. at 1196. Before signing the consent form, she informed the officers that she did not live there, rented the house for her father, and was there only to do laundry. *Id*. at 1196, 1201. The court did not find her explanations reasonable enough for the officers to infer apparent authority. *Id*. at 1201-02; *see also Terry*, 915 F.3d at 1146 (requiring agents to inquire further into a third party's ability to consent when authority is not clear).

Here, Ms. Kaplan did not have actual authority since she did not have joint access or control of Mr. Preston's ensuite bathroom for most purposes since she was granted permission only to use the tub and did not enter the room without his permission. Ms. Kaplan's access is contrasted to the girlfriend in *Groves* who used the apartment as if it was her own. In contrast, Ms. Kaplan did not use Mr. Preston's bathroom as her own. She only used it once in an emergency. She did not store any items in the bathroom. She did not use it for her regular

bathroom needs: daily showers, brushing teeth, using the toilet. Further, her access was restricted to using the bath. Like the homeowner in *Richards*, she did not enter Mr. Preston's room unless he was home. Similar to the Defendant in *Richard* who had sole use of the bedroom, Mr. Preston had exclusive use of his bathroom—he even paid more for it.

While Ms. Kaplan had a limited and specific authority to bathe in Mr. Preston's ensuite bathroom, her authority was not broad enough to consent to a search. Mr. Preston offered to let Ms. Kaplan use his tub because it was the only one in the apartment. Like the landlord in *Chapman* who was permitted only to "view waste," Ms. Kaplan was permitted only to bathe in Mr. Preston's bathroom. His offer did not include other purposes like taking a shower, using the toilette, using his sink, storing items, removing items, or rummaging through his stuff. In contrast with the girlfriend in *Groves* with actual authority, Ms. Kaplan's use of Mr. Preston's bathroom was specific and limited—only to bathe unless he gave her permission. While she did take a shower one time, this was an exception to her authority to bathe caused by an emergency.

A reasonable officer could not infer that Ms. Kaplan had apparent authority to consent to the search of the ensuite bathroom because she did not act as if she had actual authority over it. Unlike the guest in *Rosario* with apparent authority, Ms. Kaplan was hesitant to let the agents search the bathroom without Mr. Preston and explained in detail the social norms of the apartment. The officers were not ignorant that Mr. Preston was the sole owner of the room and ensuite bathroom. Further, unlike the paramour in *Illinois v. Rodriguez* who said the place was "ours," Ms. Kaplan said the bathroom was Mr. Preston's. Ms. Kaplan's responses during her interrogation where closer to the daughter in *Chaidez*. Ms. Kaplan told agents that she almost never used the bathroom, only had authorized access to bathe, and Mr. Preston paid more because the bathroom was his. Instead of following up to clarify Ms. Kaplan's true authority

over the bathroom, Agent Hill's consent was based on intentionally ignoring warning signs.

The government did not show that Ms. Kaplan had actual or apparent authority to consent to Agent Hill's warrantless search of Mr. Preston's ensuite bathroom. She did not have unrestricted and regular use of the ensuite bathroom, and a reasonable officer would not infer that she had authority to give consent. Therefore, the evidence obtained during the warrantless search must be suppressed.

II. MS. KAPLAN DID NOT HAVE ACTUAL OR APPARENT AUTHORITY TO CONSENT TO THE SEARCH OF THE BAG BECAUSE SHE DID NOT HAVE USE OF IF FOR ANY PURPOSE AND A REASONABLE OFFICER OBSERVING ITS EXTERNAL CHARACTERISTICS WOULD NOT BELIEVE SHE DID

People retain a high expectation of privacy in their personal bags. *Basinski*, 226 F.3d at 835. A party has actual authority over a container if she uses all or part of it or has permission to use it. *See Frazier v. Cupp*, 394 U.S. 731, 740 (1969). Ms. Kaplan did not have actual authority over Mr. Preston's bag because she did not use any part of it, nor did she have permission to use it. Consent to search a space can include consent to search containers within that space if "a reasonable officer would construe the consent to extend to the container," *United States v. Melgar*, 227 F.3d 1038, 1041 (7th Cir. 2000), but the consent does not automatically extend to a search of every container. *Basinski*, 226 F.3d at 834. "Rather, apparent authority turns on the government's knowledge of the third party's use of, control over, and access to the container to be searched," since they indicate authority over it. *Basinski*, 226 F.3d at 834.

Consent to search a room does not automatically extend consent to search all containers in that room but only to containers which could be reasonably considered to belong to the consenting party. *See United States v. Rodriguez*, 888 F.2d at 523. In *United States v. Rodriguez*, the Defendant's estranged wife allowed agents to search a janitor's closet. *Id*. at 522. The agents searched two bags marked with the Defendant's name. *Id*. The court found that the wife's

consent to search the room did not extend to the bags since their external markings clearly indicated belonged to the Defendant unless separate testimony showed she had actual authority. *Id.* at 524-25. In contrast, in *Aghedo*, agents received consent from a lessee to search her apartment, which included a room she shared with the Defendant. 159 F.3d at 309. The agents searched under the Defendant's mattress. *Id*. The lessee had plenary access to the shared room, cleaned it, and kept personal items in it. *Id*. at 311. The court found that the lessee to have no limits in the room since she had more access and control than a mere roommate. *Id.* Her consent had no apparent limits since no reasonable demarcation line of what belonged solely to the Defendant existed. *Id*.

Apparent authority over a container requires the reasonable belief by the officer that the consenting party has use of, control over, or access to the container being searched based on its external markings. *Basinski*, 226 F.3d at 834. In *Basinski*, an officer obtained consent to open a locked briefcase from the Defendant's friend. *Id*. at 833. The briefcase's external markings identified it as the Defendant's, even though his name was not on it. *Id*. at 835. The Defendant had not given his friend permission to open it. *Id*. The Defendant was the sole owner of it. *Id*. at 833. The friend did not have a possessory interest in its contents and was not able to access its contents. *Id*. at 835. The officers were aware of these facts. *Id.* The court found that no reasonable officer could infer that the friend had authority over the bag. *Id.* In contrast, in *Melgar*, a hotel guest consented to a search a hotel room that was in her name. *Melgar*, 227 F.3d at 1038. The officers searched a floral purse they found in the room. *Id*. at 1040. The purse belonged to the Defendant. *Id*. The court found this search to be reasonable since officers could infer it belonged to the guest. *Id.* The room was in the guest's name, other women in the room had multiple purses, and the purse did not have external markings to indicate it did not belong to

the renter. *Id.*

Here, Agent Hill should have reasonably known that any authorization Ms. Kaplan gave to search the ensuite bathroom would not extend to Mr. Preston's bag since she did not use or store anything in the bathroom. If Ms. Kaplan could consent to search the bathroom, like the wife in *United States v. Rodriguez*, it would not extend to any bag or closed cabinet ascribable to Mr. Preston. The agent knew that Ms. Kaplan was only allowed to use the tub to bathe. Her allowance would not extend to use of the cabinets or shelves within the bathroom to store her personal items. He also knew that she did not use the bathroom. Yet, after searching two cabinets, he searched a closed bag in a bathroom Ms. Kaplan did not use. In contrast to *Aghedo*, Ms. Kaplan did not have plenary access in Mr. Preston's bathroom and did not go in when he was not around. Thus, her consent could not be reasonably construed to extend to the bag.

Ms. Kaplan did not have apparent authority over the bag since the bag's external markings would not lead a reasonable agent to believe it belonged to her. Similar to the Defendant's briefcase in *Basinski*, Mr. Preston's bag was ascribable to him even without his name. Mr. Preston's bag was a closed black leather bag in a bathroom he alone used. It was surrounded by his toiletries: shampoo, soap, shaving cream, and cologne. Mr. Preston secured his bag by closing it and leaving it on a shelf in his bathroom. The agent was able to identify that Ms. Kaplan lived in the apartment merely by glancing at her toiletries in her bathroom. In Mr. Preston's bathroom, the agent's search was systematic. He started in the tub. He then searched the cabinets. Only after this search did he search Mr. Preston's closed bag. Unlike the purse in *Melgar*, it was not reasonable for the agent to believe the bag belonged to Ms. Kaplan. Mr. Preston's bag was only ascribable to himself. It was found in his bathroom, which the agent knew Ms. Kaplan did not use. The bag was characteristically ambiguous. The agent had already

seen Ms. Kaplan's toiletries in her bathroom. The bag was zipped shut, until the agent opened it. The agent knew it was Mr. Preston since the agent did not have to ask who the bag belonged to before arresting Mr. Preston.

The government did not show that Ms. Kaplan had actual or apparent authority to consent to Agent Hill's warrantless search of Mr. Preston's bag since she did not have any access to the bag or use of the bag and because the external markings of the bag should have reasonably alerted Agent Hill that Ms. Kaplan did not have authority over the bag. Therefore, the evidence obtained through warrantless search must be suppressed.

Applicant Details

First Name	**Dominique**
Middle Initial	**G.**
Last Name	**Perez**
Citizenship Status	**U. S. Citizen**
Email Address	**dominiqueperez1616@gmail.com**
Address	**Address** Street **514 Hilltop Dr** City **Galloway** State/Territory **New Jersey** Zip **08205** Country **United States**
Contact Phone Number	**6097038678**

Applicant Education

BA/BS From	**University of Delaware**
Date of BA/BS	**May 2021**
JD/LLB From	**Rutgers University School of Law--Camden** **http://www.nalplawschoolsonline.org/ndlsdir_search_results.asp?lscd=23101&yr=2011**
Date of JD/LLB	**May 15, 2024**
Class Rank	**School does not rank**
Law Review/ Journal	**Yes**
Journal(s)	**Women's Rights Law Reporter**
Moot Court Experience	**No**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**Yes**
Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Ricks, Sarah E.
sricks@camden.rutgers.edu
(856) 225-6419
Johnson, Thea
thea.johnson@rutgers.edu

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Dominique Perez
| **Email:** dgp66@rutgers.edu| **Phone:** (609) 703-8678 |

Date: June 6, 2023

The Honorable Judge Juan R. Sanchez
United States District Court, Eastern District of Pennsylvania

Dear Judge Sanchez,

As a rising third year law student at Rutgers Law School in Camden, NJ, I write to apply for a 2024-2025 clerkship position. It would be an honor to serve as your law clerk and I believe this experience would be invaluable to my future career as a criminal defense attorney.

This summer, I am interning with the Federal Defenders Capital Trial Unit for the Eastern District of Pennsylvania. As a legal intern, I am tasked with researching legal issues such as finding case law in the Tenth Circuit which establishes the government has the burden of proof in applying the Ruse Exception to the Speedy Trial Act. Additionally, I am assisting lead counsel with drafting jury instructions as well as questions for voir dire and other pretrial motions as we approach the start of trial for a client in Oklahoma next month. As a legal intern in the capital trial unit, I have learned the importance of having a constitutional trial and the impartiality of the law.

Furthermore, I interned at the Pennsylvania Innocence Project in Philadelphia, Pennsylvania. In this position I was able to enhance my legal writing and research skills assisting staff attorneys prepare for an oral argument before the Pennsylvania Supreme Court, drafting legal memorandums about a legal issue involving a missing court stenographer's transcript, and drafting an 80-page investigative report advocating for the innocence claim of a potential client based on ineffective assistance of counsel and new evidence claims.

Additionally, I was an extern for the Honorable Judge Bernard DeLury this past semester in the criminal division of Atlantic County. As an extern, I was tasked with legal research assignments to update case law regarding specific hearings like *Daubert* hearings, pretrial intervention, and *Brady* to be used by Judge DeLury to prepare for a hearing adequately. Working in collaboration with Judge DeLury's clerk inspired me to pursue a clerkship position.

Lastly, I have held leadership positions on campus as vice president of the Women's Law Caucus, Mary Philbrook chair for the Association for Public Interest Law, and as an article's editor for the Women's Rights Law Reporter. As vice president, I led planning initiatives for campus events to create spaces for women to build relationships. Also, this year I collaborated with the Muslim Law Student Association on a letter issued to the Rutgers community denouncing Islamophobic rhetoric in the wake of the deaths of Jina "Mahsa" Amini and Nika Shakarami. More specifically, we work with a Camden based mentorship program, I Dare To Care, where we host the young girls at the law school for activities. My role as Mary Philbrook chair included leading student activities throughout our annual Philbrook week, and I was able to secure *Planned Parenthood v. Casey* attorney, Kathryn Kolbert, to come speak to students at the law school about protecting abortion rights. Lastly, as an article's editor for the Women's Rights Law Reporter, I am primarily responsible for reviewing and selecting articles for publication, managing the editing process, and assisting associate editors with their sourcing and spading assignments.

In sum, my internship experience with the Federal Defenders and the Innocence Project, judicial externship, active involvement on two executive boards, and participation on journal have well-equipped me with leadership, legal writing, legal research, and time management skills which are essential for a judicial clerkship. When my Abuelos moved from Puerto Rico to the inland, they learned and later taught me, hard work will bring you unlimited opportunities. As a hard-working, passionate, and driven first-generation college graduate and law student, I am confident I can exceed the demands a judicial clerk will face every day. I hope to be considered for this position and am looking forward to speaking more about my experiences.

Respectfully,

Dominique Perez

Dominique Perez

Dominique Perez

| dgp66@rutgers.edu | (609) 703-8678 |https://www.linkedin.com/in/dominique-perez/ |

EDUCATION

RUTGERS LAW SCHOOL Camden, NJ
Juris Doctorate, GPA: 3.16 Anticipated: May 2024
UNIVERSITY OF DELAWARE Newark, DE
Bachelor of Arts, Political Science and Sociology, GPA: 3.63 Graduated: May 2021
Minor: Legal Studies Concentration: American Politics
Honors: Dean's List (All Semesters), Political Science and Sociology Honors Societies
Awards: Remarkable 31 award recipient

LEGAL EXPERIENCE

FEDERAL DEFENDERS FOR THE EASTERN DISTRICT OF PENNSYLVANIA, CAPITAL TRIAL UNIT Philadelphia, PA
Summer Intern May 2023-Present

- Draft voir dire questions and jury instructions for the trial of *The United States v. Buzzard* using Pacer and Lexis to consult Judge's previously administered jury instructions and voir dire questions as well as the Tenth Circuit Criminal Pattern Jury Instructions
- Research legal issue about the "Ruse Exception" to the Speedy Trial Act to prepare for upcoming evidentiary hearing pertaining to the 10th circuit specifically about who carries the burden of proof
- Assist federal defenders with all pre-trial motions and filings including investigating Facebook messages produced from discovery as well as ballistics analyses and calls from Delaware County Jail in Jay, Oklahoma
- Attend training regarding mitigation, *Brady* and ineffective assistance of counsel claims, Pennsylvania civil procedure regarding criminal state appeals (PCRA), habeas petitions, lethal injections, intellectual disability, forensic evidence and "junk science", voir dire claims, and AEDPA

ATLANTIC COUNTY CRIMINAL COURT Mays Landing, NJ
Judicial Extern for the Honorable Judge DeLury
Jan. 2023-May 2023

- Updated "proceedings at a glance" with new caselaw like petitions for expungement as N.J.S.A. 2C:52-2(a)(2) & (c)(3) were amended to remove the requirement that the court consider the public interest in determining whether to grant an expungement and to require instead the court find that compelling circumstances exist to grant an expungement
- Attended court proceedings such as motions, pleadings, detention hearings and trials and assist law clerk with legal research
- Reviewed motions and legal memorandum

THE PENNSYLVANIA INNOCENCE PROJECT Philadelphia, PA
Summer Intern, MAIDA Fellowship Recipient June 2022 – Aug. 2022

- Drafted 80-page investigative report concluding the innocence claim of a stage three client and presented findings of new evidence claims and prosecutorial misconduct to a panel of innocence project lawyers who would use the report to decide on whether to move the client to stage four and offer legal representation on his current PCRA petition
- Conducted comparative research dissecting the differences between men and women who pursued exonerations finding Pennsylvania PCRA relief disproportionately benefits men compared to women regarding the new evidence standard, the differences in types of crimes women are convicted for compared to men (leading to the men facing lengthier sentences which allow for the extended time necessary to win a successful exoneration), and subjection to "double deviance" standards
- Performed legal research in preparation for oral arguments before the Pennsylvania Supreme Court

STUDENT INVOLVEMENT

WOMEN'S RIGHTS LAW REPORTER Newark, NJ
Associate Editor Aug. 2022-Present

- Drafted a note to be considered for publication about abortion access post-*Dobbs* for incarcerated women in federal prisons
- Review and select articles for publication and manage the editing process

RUTGERS LAW SCHOOL ADMISSIONS OFFICE Camden, NJ
Work-Study Student Aug. 2021-Present
ASSOCIATION FOR PUBLIC INTEREST LAW Camden, NJ
Mary Philbrook Chair, General Member Aug. 2022-May 2023

- Led and planned programming for activities centered around reproductive justice to energize law students for the annual Rutgers Law School Philbrook public interest award celebration
- Led and organized a campus-wide toy drive in partnership with Eastern State Penitentiary to collect over thirty toys for children with a parent who is currently incarcerated and unable to purchase gifts

WOMEN'S LAW CAUCUS Camden, NJ
Vice President Aug. 2022-May 2023

- Mentored young girls in Camden through, I Dare To Care, in activities such as mock trials and "people in history tea" and fundraised over $500 through a t-shirt fundraiser for I Dare To Care
- Planned and spoke at networking events such as women's history month judicial reception honoring Rutgers Law Alumnae Judge Castner, Justice Pierre-Louis, Judge Todd-Ruiz, and Judge King

RECORD OF: DOMINIQUE G PEREZ

STUDENT NUMBER: 211008904

RECORD DATE: 06/09/23 PAGE: 1

TITLE	SCH	DEPT	CRS	SUP	SEC	CRED	PR	GRADE
Fall 2021 RUTGERS LAW SCHOOL								
PROGRAM: LAW								
Degree Sought: JURIS DOCTOR								
CIVIL PROCEDURE	24	601	501		01	4.0		B-
CONTRACTS	24	601	511		01	4.0		B
LAWR I	24	601	530		04	2.5		B
TORTS	24	601	541		03	4.0		B+
TOTAL CREDITS ATTEMPTED:						14.5		
DEGREE CREDITS EARNED: 14.5 TERM AVG: 3.000 CUMULATIVE AVG: 3.000								
Spring 2022 RUTGERS LAW SCHOOL								
PROGRAM: LAW								
Degree Sought: JURIS DOCTOR								
CONSTITUTIONAL LAW	24	601	506		01	4.0		B
CRIMINAL LAW	24	601	516		02	4.0		B-
PROPERTY	24	601	536		01	4.0		A-
LAWR II	24	601	550		04	2.5		B
TOTAL CREDITS ATTEMPTED:						14.5		
DEGREE CREDITS EARNED: 29.0 TERM AVG: 3.094 CUMULATIVE AVG: 3.047								
Fall 2022 RUTGERS LAW SCHOOL								
PROGRAM: LAW								
Degree Sought: JURIS DOCTOR								
WOMENS RTS LAW REPOR	23	600	574		01	0.5		PA
CURLEGISS IN MARIJ R	24	601	558		01	3.0		B-
EDUCATION LAW	24	601	641		01	3.0		A-
SEX CRIMES	24	601	646		11	2.0		B+
PHIL FOUND OF LAW	24	601	648		01	3.0		A
LABOR LAW	24	601	659		01	3.0		B
TOTAL CREDITS ATTEMPTED:						14.5		
DEGREE CREDITS EARNED: 43.5 TERM AVG: 3.334 CUMULATIVE AVG: 3.140								
Spring 2023 RUTGERS LAW SCHOOL								
PROGRAM: LAW								
Degree Sought: JURIS DOCTOR								
WOMENS RTS LAW REPOR	23	600	574		01	0.5		PA
EVIDENCE	24	601	556		11	3.0		A-
PROFESS RESPONSIB	24	601	582		90	2.0		B
POVERTY LAW	24	601	642		01	3.0		B
CRIM PRO-INVST PROCS	24	601	655		01	3.0		B+
JUDICIAL EXTERNSHIP	24	601	790		01	3.0	P	PA
TOTAL CREDITS ATTEMPTED:						14.5		
DEGREE CREDITS EARNED: 58.0 TERM AVG: 3.273 CUMULATIVE AVG: 3.167								

RECORD OF: DOMINIQUE G PEREZ

STUDENT NUMBER: 211008904

RECORD DATE: 06/09/23 PAGE: 2

TITLE	SCH	DEPT	CRS	SUP SEC	CRED	PR GRADE
Fall 2023 RUTGERS LAW SCHOOL						
PROGRAM: LAW						
Degree Sought: JURIS DOCTOR						
ISLAMIC LAW	24	601	542	01	3.0	
ESTATES AND TRUSTS	24	601	627	20	3.0	
BUSINESS ORGS	24	601	680	20	3.0	
INT&COUN: PRIS REENT	24	601	767	01	4.0	
TOTAL CREDITS ATTEMPTED:					13.0	

DEGREE CREDITS EARNED: TERM AVG: CUMULATIVE AVG:

Last Term Information

LAST TERM CREDIT HOURS:	14.5
LAST TERM CREDITS IN GPA:	11.0
LAST TERM POINTS IN GPA:	36.0
LAST TERM CUMULATIVE CREDITS IN GPA:	54.0
LAST TERM CUMULATIVE POINTS IN GPA:	171.0

***** END OF TRANSCRIPT *****

June 09, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

I highly recommend Dominique Perez for a 2024-25 state court clerkship. As a former judicial law clerk and an experienced litigator, I am certain that Dominique would be a very good law clerk.

Dominique's focus is criminal law. This summer, she is interning for the Federal Defender Capital Trial Unit in Philadelphia. Dominque spent her One L summer with the Pennsylvania Innocence Project, also in Philadelphia, where she researched multiple issues related to application of the Pennsylvania Post Conviction Relief Act.

In addition, during the school year, Dominique has eagerly sought out practical legal experience. Last spring, Dominique served as a judicial extern in the chambers of an Atlantic County Criminal Court judge. She has worked part-time for a small law firm and performed free legal services for clients served by the Rutgers Pro Bono Program.

Dominique is a Rutgers Law student leader. This year, for the Association for Public Interest Law, she chaired a series of events centered on reproductive rights and organized a dinner honoring the career of a Women's Law Project attorney. Dominique's peers elected her Vice President of the Women's Law Caucus, for which her work focuses on mentoring Camden high school girls. Dominique balances her many roles with an editorial position on the Rutgers Women's Rights Law Reporter, for which she drafted a Note on post-Dobbs abortion access for female federal inmates.

As a One L, Dominique was a student in my Legal Analysis Writing and Research (LAWR) course, a full-year introduction to predictive and persuasive legal writing and to oral presentations. Importantly, each student in my class independently researches a state statutory memo in the fall and a federal constitutional brief in the spring. The spring brief was an appeal to the Sixth Circuit. The brief concerned the timely subject of police excessive force and Fourth Amendment rights of an arrestee. I set the brief in the Sixth Circuit because that circuit left open many questions about constitutional limits on an officer's use of force. Dominique was required to grapple with a high volume of both precedential and non-precedential opinions that were in tension with each other. Dominique delivered a solid performance in all aspects of the course.

I hope you will give Dominique Perez's application serious consideration. I would be happy to speak with you further about her application.

Sincerely,

Sarah E. Ricks
Sarah E. Ricks

Sarah E. Ricks - sricks@camden.rutgers.edu - (856) 225-6419

June 09, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

I write to enthusiastically recommend Dominique Perez for a clerkship in your chambers. I have gotten to know Dominique this year as a student in my Evidence class, and as an active member of the Rutgers Law School's public interest community. Dominique is passionate about using the law for good and I know she would make an excellent clerk.

I got to know Dominique outside of the classroom before having her as a student. Dominique is one of the most engaged members of the law school's already very active public interest community. She is the Mary Philbrook Chair for the Association for Public Interest Law, and the Vice President of the Women's Law Caucus. She is the Associate Editor of the Women's Rights Law Reporter, one of Rutgers' oldest and most prestigious journals. In addition, Dominique has helped plan and promote many of the most successful public interest events at the law school. Her energy for this work comes from her deep commitment to using the law to pursue justice. Dominique has frequently come by my office hours to talk about her career goals and questions she has about the law. It is clear in nearly every conversation I've had with Dominique how much she cares about community-building and figuring out how to make the law a tool for justice. As a result, she is well-liked and respected by her peers and professors, alike.

Dominique also brought this energy to the classroom. This semester Dominique was a student in my Evidence class. In every class, we do small-group, in-class exercises using hypotheticals. Some students are less enthusiastic than others about this sort of in-the-weeds work, but I could rely on Dominique and her small group to always take the work seriously and to meaningfully engage with the doctrine. She was clearly in the classroom to learn and challenge herself; a fact reflected by her excellent grade in the class. In addition, her engagement was also clear from the many out-of-class questions she had for me about how Evidence intersected with various areas of criminal law that she had studied in other classes. Her interest in the subject extended well beyond class time.

Dominique is also a lovely person to work with. Beyond her tremendous energy and passion for the law, she is incredibly kind, patient and compassionate. She would make an excellent addition to your chambers and I recommend her without hesitation.

Sincerely,

Professor Thea Johnson
Rutgers Law School

The following writing sample provided was written for LAWRII with Professor Sarah Ricks. The assignment was an appellate level brief and the pages provided are my argument section which details an analysis on Fourth Amendment taser law in the Sixth Circuit. I represented the appellee/police officer and was tasked with defending a summary judgment ruling entered in my client's favor. I first argued the Fourth Amendment grants police officers faced with a split-second decision to administer their Taser on a larger suspect posing an immediate threat to their safety by reaching into a concealed area that an officer cannot see into, in an open carry state while exerting verbal hostility to ensure their safety. I then argued, the Fourth Amendment allows police officers to use a Taser for a second time, on a larger suspect who is actively resisting arrest, by making perilous physical contact on an officer, as more suspects show signs of intervening, and as a result, leaves a singular officer outnumbered.

ARGUMENT

I. Summary Judgment Should Be Affirmed Under the Fourth Amendment Because Mr. Paul Posed an Immediate Threat to Officer Donne's Safety, Mr. Paul Also Resisted Arrest, so it Was Reasonable for an Officer to Use the Taser.

A. When a Suspect is An Immediate Threat to An Officer's Safety Because They Reach into an Area the Officer Cannot See, Coupled with Verbal Hostility, And the Officer Has Reason to Believe They Are in Possession of a Weapon, The Use of Taser Against the Suspect is a Reasonable Amount of Force.

1. The suspect posed an immediate threat as he reached into an area Officer Donne could not see.

When a reasonable police officer fears a suspect may react to an attempt to detain him by drawing or reaching for a weapon, the use of Taser is justified *Shanaberg v. Licking Cty*., 936 F.3d 453, 456 (6th Cir. 2019). The law does not provide the right of freedom from use of Taser when the police do not recover a weapon from the suspect, "We do not, however, judge…actions with reflective speculation." *Id*. at 457. In *Shanaberg*, deputies located a suspect allegedly armed and dangerous, in the morning, who refused to comply with commands *Id*. at 455. The suspect reached toward his truck door and then returned his hands to the air *Id*. The court denied the excessive force claim. A reasonable officer would have feared the suspect might react to an attempt to detain by reaching for a weapon. Such a fear makes it reasonable to tase the suspect, removing the threat of safety to the officers on the scene *Id*. at 456.

This court previously ruled tasing a reasonable response to a threat of immediate harm when a suspect may be armed and reaches into an area where the sight of the officers is limited (*Watson v. City of Marysville*, 518 Fed. Appx. 390, 393.) (6th Cir. 2013). In *Watson*, for example, police responded to a call that a suspect walked in a neighborhood with an assault rifle *Id*. at 391. The officer asked the suspect to place his bag on the ground, the suspect then became upset. He threw his bag into the air and told the police he had a computer inside *Id*. at 393. After the suspect was tased, police located the computer *Id*. at 393. This court rejected an arrestee's excessive force claim because

officers believed he had a weapon, and reached in an area the officers could not see after an order not to *Id*.

By contrast, this court previously held that if it is undisputed that a suspect was unarmed and made, "no evasive movement" suggesting possession of a weapon, there is no immediate threat *Kent v. Oakland Cnty.*, 810 F.3d 384, 391 (6th Cir. 2016). The court ruled that an incident lasting twenty minutes in a suspect's home, where a suspect's hands are up and their back is to the wall, and an officer uses the taser, the force is unreasonable *Id*. at 388-89.

Just like the suspect who reached towards an area the officers could not see, Mr. Paul reached into an area Officer Donne could not see. This reach created reasonable fear the suspect was in possession of a weapon (*Shanaberg*, 936 F.3d at 454.) (RR. 5). The fear here was heightened because it took place in Michigan, a state where residents are legally allowed to carry firearms, and the suspect was getting out of a car which showcased a "NRA" sticker (RR. 16). In contrast to *Shanaberg*, Officer Donne was alone and in the dark, but in *Shanaberg*, there were multiple officers on the scene in the daylight of morning (RR. 9 and 4) *Id*.

Just like the suspect in *Watson*, who told police officers that his computer was in his bag before he reached inside, the suspect here, Mr. Paul, also told Officer Donne his iPhone was inside his pocket as he reached inside (*Watson*, 518 Fed. Appx. at 391.) (RR. 5). Furthermore, as in *Watson*, after the police tased the suspect they found no weapon in the bag he reached into, and in this case, after Officer Donne tased the suspect, she found no weapon in the pocket of the suspect *Id*. at 392 (RR. 17). Since the court in *Watson* ruled the tasing was a reasonable amount of force, despite the suspect telling the officers what was in his bag, and later finding no weapon in the bag, the force exerted in this case is constitutional *Id*.

Mr. Paul's claim is unlike the excessive force claim in *Kent* because there the incident took place in a suspect's most sacred space, their home, over a prolonged period of twenty minutes. The police had no reason to believe that the suspect was in possession of a weapon as he did not make evasive movement for an officer to assume so *Kent*, 810 F.3d. at 387-89. By contrast, here, the incident took place on a public highway, over a rapid period of three to five minutes, where the suspect, Mr. Paul, made evasive movement to suggest he had a weapon by reaching inside of his pocket concealed from an officer's view (RR. 3, 5, 6).

2. <u>When a suspect reaches into concealed view from an officer coupled with verbal belligerence there is an immediate threat.</u>

Additionally, when an individual begins to escalate tension by utilizing verbal hostility, the immediate threat becomes intensified. When an officer reasonably fears a suspect to be in possession of a weapon, and the suspect is "verbally belligerent" a dangerous combination has been created. This verbal belligerence results in an officer to be fearful of their safety (*Shanaberg*, 936 F.3d at 456.). In this instance, the suspect yelled at the officers and increasingly grew more agitated *Id*. at 454. Likewise, the court ruled when an individual has a combative attitude, and shouts statements, that all give an officer belief the suspect may pose a safety threat, the use of a Taser is not excessive force *Siders v. City of Eastpointe,* 819 Fed. Appx. 381, 390 (6th Cir. 2020). *Siders* involved two officers who issued a warning and the suspect yelled back a command for the officer to not touch her *Id*. at 385.

Just like the agitated suspect in *Shanaberg* who yelled at the officers, Mr. Paul exited his vehicle in an agitated state as he yelled at Officer Donne (*Shanaberg*, 936 F.3d at 456.) (RR. 5). *Siders* is analogous to this case because in both cases the suspects yelled a command at the officer. The suspect in *Siders* yelled, "Don't put your hands on me, you have no reason to put your hands on me," Mr. Paul also yelled the command, "Hey! You can't touch him like that! Get your hands off my son! I'm getting my phone," at officer

Donne as he exited the vehicle (*Siders*, 819 Fed. Appx. at 385.) (RR. 5). Unlike the two officers in *Siders* who issued multiple orders, Officer Donne did not issue any warning before she deployed her Taser *Id.* at 390 (RR. 5). Although Officer Donne did not give warning, she was alone in a tense split-second situation, unlike the incident in *Siders* involving two officers (RR. 4). Because Mr. Paul exited the vehicle verbally belligerent, issuing his own orders to an officer, the use of Taser was justified.

3. The circumstances an officer is faced with, such as, a traffic stop on the side of a local highway, in the early morning hours of the night with limited visibility, in a college town notorious for drunk driving, and the rapid time the events unfolded contributes to the threat of harm.

The surrounding circumstances an officer is subjected to possess the potential to create an immediate harm. This court in *Martin* considered the totality of the circumstances to assess the immediate threat the officers were involved in which included factors such as the length of time the incident occurred and ruled for the appellant *Martin v. City of Broadview Heights*, 712 F.3d 951, 961-64 (6th Cir. 2013). On the other hand, this court has ruled, "the risk of serious bodily injury or death is great when encountering the high-speed traffic present on an interstate…this risk was further heightened by the darkness and limited visibility." *Williams v. Sandel*, 433 Fed. Appx. 353, 361 (6th Cir. 2011). In *Williams* the intoxicated suspect embarked on a naked jog alongside an interstate *Id*. at 354. An officer located the suspect on the highway which had no source of light but the police's headlights *Id.* 354. Continuous traffic passed by them, while more officers arrived, and the struggle continued as the suspect ran into traffic *Id*.

This court has assessed factors including how long an incident lasts. Unlike the hour-long incident in *Martin*, here the events took place rapidly over three-five minutes (*Martin*, 712 F.3d at 955.) (RR. 6). Mr. Williamson even testified, "it was happening so fast." (RR. 11). Since this was a hasty encounter, the immediate harm had to be assessed rapidly.

Just like the officers in *Williams* who were on patrol in the early morning hours attempting to arrest a suspect on an ill-lit highway as traffic passed by them, Officer Donne was also placed in a circumstance where she was on patrol in the early hours. She also had to perform an arrest on the side of a dark highway as traffic passed by in a town notorious for drunk driving (*Williams*, 433 Fed. Appx. at 354.) (RR. 3, 4). Because Officer Donne was exposed to dangerous traffic, composed of potential drunk drivers, on a dark highway, there was an immediate threat of harm (RR. 14).

Additionally, Officer Donne was subjected to a threat as cars passed by at high speeds of 65 -75 mph just like the officers in *Williams* where speedy traffic passed by (RR. 4) *Id*. at 355. Although the suspect in this case did not attempt to run into traffic like the suspect in *Williams*, Officer Donne was unaware of if Mr. Paul would do something similar *Id*. at 356. Given that cars were passing by on the side of a highway at high speeds, Officer Donne was exposed to an immediate threat.

Lastly, traffic stops are inherently dangerous for officers. Donne conducted a traffic stop, unlike the officers in *Williams*, who were investigating a call about a naked man on the highway, *Id*. at 354 (RR. 4). Traffic stops according to Lieutenant Furkan Korkmaz, are inherently dangerous, as 70 officers died last year conducting one, and because of their unpredictability which can result in an assault on the officer, resistance against an officer, or flight by the suspect(s) (RR. 29). Because of this danger, compared to handling a naked man, there is an immediate threat.

4. <u>The superior physical makeup of a suspect compared to that of the officer(s) can increase the threat as well as what the suspects are or are not wearing, and the number of officers against suspect(s).</u>

Similarly, there are additional factors the court considers assessing the immediate threat. The court in *Martin* evaluated the height and weight of the officers and the suspect's as well as what the suspect was or was not wearing, and the number of officers on the scene compared to a suspect to determine if there was a reasonable threat (*Martin*,

712 F.3d at 961.). The four officers in *Martin* weighed between 180 and 245 pounds, but the singular naked suspect was 5' 10" weighing only 172 pounds *Id*. at 954-55. If a suspect is naked the officers "could not reasonably fear" he "would produce a weapon to use against them." *Id*. at 962. Based on the totality of the circumstances, the court concluded the suspect was not a threat *Id*. at 954.

The court has consistently considered the context of an incident. In *Siders*, the court also considered the height and weight of the suspects on the scene and what the suspects wore in their analysis of threat (*Siders*, 819 Fed. Appx. at 384). There, police were told weapons were unknown, and one suspect was dressed in a suit and tie who was 5'5" and 190 lbs., while the other, was a 5'4" 200 lbs. woman dressed in jeans and a tank top *Id*. at 383-84. As a result of the totality of the circumstances, the court could conclude there was an immediate threat *Id*.

Officer Donne's context is significantly different from the one the officers in *Martin* were involved with. To begin, the officers in *Martin* weighed between 180 lbs. and 245 lbs., but the suspect was 5' 10" weighing only 172 lbs. *Id*. at 955. In opposition to *Martin*, here, Mr. Paul, is a towering 6'2" man weighing approximately 220 lbs., and Officer Donne on the other hand, is only 5'4" weighing about 145 pounds (RR. 6,18,19). Similarly, to *Siders*, the court's opinion included the facts regarding the physical makeup of the two suspects, stating that one suspect was a male who was 5'5" and 190lbs, while the other, was a 5'4" 200 lbs. woman (*Siders*, 819 Fed. Appx. at 384). This is analogous here because the court considered the size of the suspects in both cases to determine its relevance to threat. The drastic differing physical makeup between Mr. Paul and Officer Donne intensify the threat.

By contrast, here, Mr. Paul was fully dressed in three layers of clothing, including a big puffy North Face jacket, a sweater, and a T-shirt, unlike the suspect in *Martin*, who was completely naked (RR. 5, 14) (*Martin*, 712 F.3d at 954.). Whether a suspect is, or is

not, wearing clothes, contributes to the possibility that the suspect could be in possession of a weapon. Since the suspect in this case was in layers of clothing, it gives rise to the possibility that the suspect may be in possession of a concealed weapon, unlike the suspect in *Martin*, who was completely naked, which certified no possibility to be in possession of any weapon (RR. 6) (*Id*. at 962).

Following that point, the court denied an excessive force claim in *Siders* which included the facts that both of the suspects were fully dressed, one in a suit and tie, and the other dressed in jeans and a tank top (*Siders*, 819 Fed. Appx. at 384.). Just like the suspect here, who was fully dressed, and Officer Donne was initially unaware if the suspect was in possession of a weapon, the suspects in *Siders* were also fully dressed, and the police were told "weapons unknown", which created the possibility for suspects in both cases to have concealed weapons *Id*. (RR. 6). What a suspect is wearing at the time of the incident is considered in this court's analysis of immediate threat.

On the contrary, the court must consider the number of officers to a suspect. In *Martin*, the officers outnumbered the suspect, as there were four against only one suspect unlike this case, where the suspects outnumbered Officer Donne, as she was alone, against two very intoxicated women, Mr. Williamson, and Mr. Paul (*Martin*, 712 F.3d at 954.) (RR. 8, 15). In sum, it is vital to consider how many suspects are on the scene compared to an officer to determine immediate threat.

B. The Second Use of a Taser is a Reasonable Amount of Force When the Arrestee is Actively Resisting Arrest, and the Officer Must Regain Control Over the Situation, Especially as More Suspects Intervene.

1. When the suspect resists arrest in physically shoving an officer, use of force is indispensable.

Summary judgment should be affirmed because the arrestee was actively resisting arrest and verbally hostile. When an arrestee actively resists arrest police can use a Taser to subdue him *Rudlaff v. Gillispie*, 791 F.3d 638, 639 (6th Cir. 2015). This court has continuously held, "A suspect who actively resists arrest and refuses to be handcuffed,

officers do not violate the Fourth Amendment by using a Taser to subdue him." *Id*. at 646 (quoting *Hagans v. Franklin County Sheriff's Office*, 695 F.3d 505, 509 (6th Cir. 2012)). When a suspect is, "uncooperative by actively resisting the officers' attempts to secure his arms behind his back," the use of a Taser by an officer in drive-stun mode is not gratuitous *Caie v. West Bloomfield Twp*., 485 Fed. Appx. 92, 97 (6th Cir. 2012). In that case, an unstable suspect was taken to the ground by police with his hands under his body *Id*. at 94. The officers ordered the suspect to put his hands behind his back, the suspect refused, so police tased him *Id*. On the other hand, in an incident lasting less than two minutes, a suspect told an officer they were sick and pulled their arm away *Smith v. City of Troy*, 874 F.3d 938, 942, 945 (6th Cir. 2017). This court did not consider tasing a suspect eight times for 48 seconds, with no awareness regarding their arrest, proportional to the minimal resistance *Id*.

The arrestee's behavior does not satisfy the requirements for passive resistance, and is instead, in accordance with this court's clearly established law, considered to be active resistance. In *Rudlaff,* for example, this court found the arrestee to be actively resisting arrest as he refused to give the officer his hands, so the officers were constitutionally allowed to tase the arrestee (*Rudlaff,* 791 F.3d at 642.). When the suspect failed to put his hands on the truck after an order to do so, the officer grabbed his right arm and tried to move it onto the vehicle *Id*. The suspect then "swung" his arm back in the officer's direction *Id*. The second officer warned the suspect to relax, or he would be tasered, and moments later the suspect was tased *Id*.

Just like the arrestee in *Rudlaff* who swung their arm backwards in the officer's direction, likewise, Mr. Paul elbowed Officer Donne in the gut causing her to stumble backwards (*Rudlaff,* 791 F.3d at 640.) (RR. 6, 17). Although Officer Donne did not warn him before she issued her Taser, the warning in *Rudlaff* was issued by the second officer

on the scene, and unlike that case, Officer Donne did not have back up to assist her *Id*. (RR. 4, 14).

When an officer cannot secure an uncooperative suspect's arms behind their back, there is active resistance, and the use of Taser is constitutional. Just like the uncooperative suspect who did not put his hands behind his back for arrest, Officer Donne struggled with Paul, who was uncooperative in placing both arms behind his back (RR. 6) (*Caie,* 485 Fed. Appx. at 94.). Officer Donne was not advised about Paul's recent surgery, unlike the officers in *Caie*, who were advised prior about the suspect's state of health (RR. 6) *Id*. Furthermore, Officer Donne faced physical active resistance as she was elbowed in the gut, unlike the situation in *Caie* faced, which did not consist of physical contact on the officers *Id*. (RR. 6). When an uncooperative suspect hinders an officer's ability to successfully place their arms behind their back, the action is considered active resistance, and the use of Taser is reasonable under the fourth amendment.

Unlike *Smith*, Officer Donne did not deploy the Taser eight times for a total of 48 seconds, she deployed it only twice for a mere ten seconds (*Smith*, 874 F.3d at 945.) (RR. 18) Additionally, the suspect in *Smith* told the officer he was sick, but in this case, Mr. Paul does not tell Officer Donne about his recent arm surgery *Id*. (RR. 5). Even though the incident in *Smith* occurred rapidly, similar to this case lasting between 3-5 minutes, Officer Donne did tell Paul he was under arrest, unlike the officers in *Smith* who never did tell the suspect *Id*. at 942 (RR. 6). Although the suspect in *Smith* pulled his arm away, the officers' actions that followed were not proportional to the suspect's minimal resistance.

2. <u>In order for an officer to regain control over a suspect, there is no preclusion for a disabled suspect.</u>

Similarly, this court has recognized the crucial need to gain control over a suspect to carry out an arrest. A suspect's resistance, probably caused by a mental disability, does not preclude deputies from using a reasonable amount of force to bring a suspect under

control (*Roell,* 870 F.3d at 482.). This court has ruled that an officer's single use of the Taser in drive-stun mode was not gratuitous because, "it served the purpose of gaining control over a highly intoxicated, volatile, and uncooperative was therefore considered reasonable use of force" (*Caie*, 485 Fed. Appx. at 97.). Agitated suspects increase an officer's need to act to regain control.

Just like the suspect in *Roell* who was out of control, Mr. Paul was out of control as he admitted to being frustrated, yelling, and elbowed her in the gut (*Roell,* 870 F.3d at 478.) (RR. 5). Although Mr. Paul did not suffer from a mental disability like the suspect in *Roell*; he was partially physically disabled from recent arm surgery, and in both cases, their disabilities prevented police from carrying out an arrest *Id*. at 482 (RR. 5). Disabilities do not preclude out of control suspects from being free of Taser use.

Likewise, in *Caie*, the police issued the Taser in drive stun mode to bring an uncooperative and agitated suspect under control, just like in this case, as Mr. Paul was in an agitated state and was uncooperative in his arrest, so Officer Donne issued the taser in drive stun mode to regain control over the suspect (RR. 17).

3. <u>When a dramatic change occurs, such as indication a suspect will intervene, the use of force becomes necessary.</u>

The circumstances police are involved in inevitably change, as time progresses, which require an officer to also change their actions. When an officer observes a dramatic change in a circumstance, where the officer is faced with a split-second decision, the use of force is constitutionally permissible *Pollard v. City of Columbus*, 780 F.3d 395, 403 (6th Cir. 2015). In a "tense, uncertain, and rapidly evolving situation," police shot and killed a suspect who was believed to be unconscious and in possession of a weapon, but after a dramatic change in circumstance, he regained consciousness and made gestures suggesting possession of a weapon *Id*. at 399-403. This court in *Siders*, assessed the changing circumstance when a man intervened with police, who were attempting to get the suspect under control (*Siders*, 819 Fed. Appx. at 391.). In *Siders*, since there were two

police officers on the scene, a changing circumstance was able to be controlled when another suspect began to physically intervene with the arrest *Id*. at 386.

Just like the "tense, uncertain, and rapidly evolving situation" in *Pollard* which lead to a dramatic change in circumstances prompting use of force, here, Officer Donne was in a tense, uncertain, rapidly evolving situation which lead to a dramatic change in circumstance, when Corliss, who was "five beers past her limit", "pretty wasted", hysterically shrieking and yelling, opened the car door (*Pollard*, 780 F.3d at 403.) (RR. 8, 11). *Pollard* is akin to this matter because the police there had reason to think the suspect was in possession of a weapon, just like this case, since the two women were inside of the vehicle with a "NRA" bumper sticker in an open-carry state *Id*. at 399, 400 (RR. 16). Officer Donne had reasonable suspicion to believe Corliss and Tory to be in possession of a weapon which heightened the need to successfully arrest Paul, especially as Corliss opened the car door.

Additionally, just like the suspect in *Siders* who attempted to intervene with the police, as soon as Corliss, who was drunk and hysterical, opened the car door, Officer Donne used her Taser for a second time (*Siders*, 819 Fed. Appx. at 386.) (RR. 11). Unlike *Siders*, where there were two officers on the scene *Id*., since Officer Donne was alone due to staff shortages, she was solely responsible for ensuring not only control over Mr. Paul, but also the women in the car who could potentially intervene (RR. 3, 4, 14). Also, Lieutenant Furkan Korkmaz testified that one of the factors which makes traffic stops so dangerous is because, "Passengers that are under the influence…are the most difficult to manage. They are usually loud and yelling and most of their words are incoherent…the more passengers in the vehicle, the more difficult the stop becomes." (RR. 29). When passengers show signs of intervening, especially when under the influence, it is essential for an officer to do what it takes to manage the ongoing situation.

CONCLUSION

For the foregoing reasons, the grant of summary judgment by the Eastern District of Michigan should be affirmed and the force used by Appellee should be declared constitutional under the Fourth Amendment. There is no genuine issue of fact material to the claim; and a jury could not find for Mr. Paul.

Respectfully Submitted,

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Dominique Perez

Attorney for Appellee

Certification

I certify that in completing this brief I have complied with all relevant rules in the Legal Research & Writing Student Manual and with Rutgers School of Law Academic Policies and Procedures for independent, private assignments. I understand that if I have violated these rules or the Honor Code, I am subject to sanctions.

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Dominique Perez

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Date